

Page 1

1 IN THE UNITED STATES DISTRICT COURT
2 FOR THE DISTRICT OF NORTH DAKOTA
3 WESTERN DIVISION

4 Civil Action No. 19-cv-150-DMT-ARS

5 RULE 30(b)(6) VIDEOTAPED DEPOSITION OF:
6 JASON N. O'NEAL - DEPARTMENT OF THE INTERIOR,
7 BUREAU OF INDIAN AFFAIRS
8 December 6, 2022
9 Via RemoteDepoTM

10 STATE OF NORTH DAKOTA,

11 Plaintiff,

12 v.

13 UNITED STATES OF AMERICA,

14 Defendant.

15 PURSUANT TO NOTICE AND AGREEMENT, the
16 Rule 30(b)(6) videotaped deposition of JASON N.
17 O'NEAL, DEPARTMENT OF THE INTERIOR, BUREAU OF INDIAN
18 AFFAIRS, was taken on behalf of the Plaintiff in
19 Washington, D.C., by remote means on December 6, 2022,
20 at 8:59 a.m. Mountain Standard Time, before Tracy C.
21 Masuga, Registered Professional Reporter and Certified
22 Realtime Reporter, appearing remotely from Denver
23 County, Colorado.

December 06, 2022

2 to 5

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1	REMOTE APPEARANCES		
2	For the Plaintiff:		
3	PAUL B. KERLIN, ESQ. Greenberg Traurig LLP 1000 Louisiana Street Suite 6700 Houston, Texas 77002 kerlinp@gtlaw.com		1 Exhibit 839 Email to Gibson and Cruzan from O'Neal, 3/21/17, Subject: Fwd: Diamond Pipeline Protest Camp; with attached emails; with attachments; DOI_00011686 - DOI_00011700
4			2
5			3
6			4
7	PAUL M. SEBY, ESQ. Greenberg Traurig LLP 1144 15th Street Suite 3300 Denver, Colorado 80202 sebyp@gtlaw.com		5 Exhibit 840 Email to Mathis from O'Neal, 1/26/17, Subject: Re: Update; with attached email; DOI_00026858 - DOI_00026859
8			6 Exhibit 841 Email to Cruzan from O'Neal, 2/3/17, Subject: Re: News Release: Statement of Acting Assistant Secretary Michael S. Black on the Standing Rock Sioux Tribe and BIA Law Enforcement Assistance; with attached emails; with attachment; DOI_00019810 - DOI_00019812
9			7
10	For the Defendant:		8
11	TIMOTHY B. JAFEK, ESQ. JANE E. BOBET, ESQ. VICTOR WILLIAM SCARPATO III, ESQ. Department of Justice U.S. Attorney's Office District of Colorado 1800 California Street Suite 1600 Denver, Colorado 80202 timothy.jafek@usdoj.gov jane.bobet@usdoj.gov victor.scarpato@usdoj.gov		9 Exhibit 842 Email to Good from O'Neal, 2/3/17, Subject: Re: FBI BIA memo on response to civil disorder; with attached email; with attachment; DOI_00010611 - DOI_0001623
12			10 Exhibit 843 Email to O'Neal, et al., from Cossey, 2/16/17, Subject: webEOC feed 2; with attached emails; with attachment; DOI_00011094 - DOI_00011099
13			11 Exhibit 844 Email to O'Neal from Keener, 10/3/16, Subject: Re: ESF-13: Preemptive preparations for Hurricane Matthew; with attached emails; DOI_00009144 - DOI_00009146
14			12
15			13
16			14
17			15
18			16
19			17
20			18
21			19
22	Also Present:		20
23	Michael Banks, Videographer		21
24	Jose Diaz		22 Exhibit 845 Email to Cruzan from O'Neal, 12/22/16, Subject: Re: OJS meeting with the Secretary; with attached emails; DOI_00013061 - DOI_00013065
25			23
			24
			25
	I N D E X	Page 3	Page 5
1	EXAMINATION OF JASON N. O'NEAL:	PAGE	99
2	December 6, 2022		
3			
4	By Mr. Kerlin	9	
5			
6	By Mr. Jafek	109	
7			
8	DEPOSITION EXHIBITS:	INITIAL REFERENCE	
9	(Exhibits provided electronically to the reporter.)		
10	Exhibit 833 Email to Cruzan from O'Neal, 2/14/17, Subject: Re: OPS Plan; with attached emails; with attachments; DOI_00033754 - DOI_00033777	21	
11			
12	Exhibit 834 Email to Smart and Lawrence from O'Neal, 9/28/16, Subject: Re: 9-28-2016; with attached emails; DOI_00009107 - DOI_00009108	40	
13			
14	Exhibit 835 Email to O'Neal, McClure, and Cossey from Smith, 10/18/16, Subject: Tuesday Nightly Brief; with attachment; DOI_00009745 - DOI_00009754	43	
15			
16			
17	Exhibit 836 Email to Hudson, Armstrong, and Smart from O'Neal, 9/27/16, Subject: Fwd: Tribal Court Jurisdiction over North Camp (Redacted); with attached emails; DOI_00027254 - DOI_00027257	47	
18			
19	Exhibit 837 Email to Salamanca from O'Neal, 9/23/16, Subject: Re: North Camp Request for Dialogue; with attached emails; DOI_00011791 - DOI_00011793	74	
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23	Exhibit 838 Email to O'Neal from Cossey, 2/16/17, Subject: Meeting Live Feed; with attached emails; DOI_00011084 - DOI_00011088	76	
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1	Exhibit 803	Second Amended Notice of 30(b)(6) Deposition of The United States of America, 11/23/22; with attachments	12	Masuga on behalf of U.S. Legal Support, please enter the statement for remote proceedings into the record.
2	Exhibit 821	Joint Statement from Department of Justice, Department of the Army, and the Department of the Interior regarding D.C. Circuit Court of Appeals Decision in Standing Rock Sioux Tribe v. U.S. Army Corps of Engineers, 10/10/16; USACE_00015886	64	THE REPORTER: The attorneys participating in this deposition acknowledge that I am not physically present in the room and that I will be reporting this proceeding remotely. They further acknowledge that in lieu of an oath administered in person, the witness will verbally declare his testimony in this matter is under penalty of perjury.
3				Counsel, please indicate your agreement by stating your name and your agreement on the record.
4				MR. KERLIN: This is Paul Kerlin on behalf of the plaintiff, the State of North Dakota, and we agree.
5				MR. JAFEK: This is Tim Jafek on behalf of the United States, and we agree.
6				THE REPORTER: Mr. O'Neal, do you solemnly state that the testimony you are about to give in the cause now pending will be the truth, the whole truth, and nothing but the truth?
7				THE DEONENT: Yes.
8				JASON N. O'NEAL, having been first duly sworn to state the whole truth, testified as follows:
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		Page 7		Page 9
1	WHEREUPON,	the following proceedings		EXAMINATION
2	were taken pursuant to the Federal Rules of Civil			BY MR. KERLIN:
3	Procedure.			Q. Good morning, Mr. O'Neal. My name is
4	* * * *			Paul Kerlin, and I'm an attorney with the law firm
5	(Deposition Exhibits 833 through 847			Greenberg Traurig, as well as a Special Assistant
6	were introduced by Mr. Kerlin and electronically			Attorney General for North Dakota, and I represent
7	provided to the court reporter for marking.)			North -- the State of North Dakota in this action,
8	THE VIDEOGRAPHER: We are now on the			along with my colleague, Paul Seby. Do you understand
9	record. Participants should be aware that this			that?
10	proceeding is being recorded and, as such, all			A. Yes. Good morning, Paul.
11	conversations held will be recorded unless there is a			Q. Good morning. Would you state your
12	request and agreement to go off the record.			name.
13	Private conversations and/or			A. My name is Jason O'Neal.
14	attorney-client interactions should be held outside			Q. And today I'll refer to my client as
15	the presence of the remote interface.			"North Dakota" or "the State of North Dakota," okay?
16	This is the remote video-recorded			A. Okay.
17	deposition of Jason O'Neal. Today is Tuesday,			Q. You understand that you've been sworn in
18	December 6, 2022. The time is now 3:59 p.m. UTC,			and you're under oath, correct?
19	8:59 a.m. Mountain. We're here in the matter of State			A. Yes.
20	of North Dakota v. United States of America.			Q. And you understand that some or all of
21	My name is Michael Banks. I'm a video			the testimony you give today may be played in front of
22	technician on behalf of U.S. Legal Support. I'm not			the judge at the trial of this matter?
23	related to any party in this action, nor am I			A. Yes.
24	financially interested in the outcome.			Q. And -- and you're doing a good job.
25	At this time will the reporter, Tracy			We're taking this deposition by agreement of the

<p style="text-align: right;">Page 10</p> <p>1 parties remotely, so by Zoom. If at any point you 2 have difficulty hearing, sometimes there could be some 3 audio issues, might be bandwidth limitations, just 4 let -- speak up, let us know, and we will do the best 5 we can to address any technical issues that arise.</p> <p>6 A. Yes.</p> <p>7 Q. Also, we'll be using some documents, I 8 think, throughout this deposition as exhibits, and we 9 will endeavor to share our screen so that you can see 10 it. If it's too small, too large, you want us to 11 scroll up or down, just simply provide some verbal 12 instruction, and -- and we'll move it around to make 13 sure that you'll have a complete and full opportunity 14 to review the exhibit before or during the questions 15 that we ask about it, okay?</p> <p>16 A. Okay. Thank you.</p> <p>17 Q. And you're doing a great job of letting 18 me finish my questions. That's one of the other 19 things, both -- I mean, more often in person than 20 remotely, but frequently in the course of the 21 deposition the person being deposed will anticipate 22 where the questioner is going and might start their 23 answer before the question is finished. It's 24 difficult and challenging for the court reporter to 25 take down a clean record, as we say, so that, you</p>	<p style="text-align: right;">Page 12</p> <p>1 question pending, that we might want to get an answer 2 to that question before we then take the break, okay?</p> <p>3 A. Thank you, Paul.</p> <p>4 Q. Any questions about the proceedings so 5 far?</p> <p>6 A. No, sir.</p> <p>7 Q. Okay. Do you understand that today you 8 are being -- you've been tendered as a -- as a witness 9 on behalf of the Department of the Interior in this 10 case on certain topics?</p> <p>11 A. Yes, sir.</p> <p>12 Q. Okay. And I'm going to show you what's 13 been marked as Exhibit 803, as I recall. And we can 14 zoom in on this, and I think you're on the next page, 15 but before we do, if you would just take a look at 16 this. Do you recognize this document?</p> <p>17 A. Yes, I do.</p> <p>18 Q. Have you seen this before, then?</p> <p>19 A. I have.</p> <p>20 Q. Okay. And if we turn to page 2, your 21 name appears as the designee for topics 6, 9, 10, 13 22 through 16, 20, and 21 as they relate to the 23 Department of the Interior or the Bureau of Indian 24 Affairs. Do you see that?</p> <p>25 A. Yes, sir.</p>
<p style="text-align: right;">Page 11</p> <p>1 know, it gets the full question and the full answer if 2 we talk over each other.</p> <p>3 I will do my best not to. And if you 4 could just wait until my question is completed, if 5 there's an objection by your counsel, if there's an 6 objection lodged, and then provide your answer so that 7 we're not talking over each other as best as possible, 8 okay?</p> <p>9 A. Understood.</p> <p>10 Q. Great. And the last thing I would 11 mention is verbal answers. Sometimes we nod our head. 12 So I might prompt you for a verbal answer, if that's 13 the case, but it's simply so the court reporter can 14 get that answer down on the record rather than a head 15 nod or a head shake, okay?</p> <p>16 A. Yes.</p> <p>17 Q. If you need a break, let me know. I 18 understand you have other obligations besides this, 19 and I appreciate your time today, and we'll respect 20 that. If you have something that comes up, either for 21 work or for some other reason you need a break, just 22 let me know. We'll typically take a break around -- 23 probably the top of the hour. If -- if you need one 24 sooner than that, let me know.</p> <p>25 I would ask, you know, if we have a</p>	<p style="text-align: right;">Page 13</p> <p>1 Q. And have you prepared to testify on 2 those topics?</p> <p>3 A. I have.</p> <p>4 Q. Can you give me an idea of the total 5 amount of time you spent preparing for your deposition 6 today.</p> <p>7 A. Yes, sir. I had met with attorneys from 8 both the Department of Interior and the Department of 9 Justice on three different occasions for approximately 10 two hours each, reviewing materials; and as well spent 11 about 12 hours reviewing documentation that was shared 12 with me. That would include a large electronic binder 13 of documents and a chronology of the incidents and 14 events, depositions from Darren Cruzan and Sally 15 Jewell, as well as a number of emails and other 16 documents. That's all I can remember at the time. I 17 know there was quite a few documents and quite a bit 18 of time spent reviewing.</p> <p>19 Q. Okay. Other than counsel that you 20 mentioned, did you speak with anyone in preparation 21 for your deposition?</p> <p>22 A. I did not.</p> <p>23 Q. Okay. So you didn't speak with either 24 Mr. Cruzan or Sally Jewell?</p> <p>25 A. I did not.</p>

<p style="text-align: right;">Page 14</p> <p>1 Q. Okay. And so your testimony on these 2 topics will be based upon what you prepared. So you 3 said there was an electronic binder that you reviewed, 4 materials, for about 12 hours, including some 5 depositions and some other documents, and you 6 specifically mentioned Darren Cruzan and Sally 7 Jewell's depositions. And then you mentioned that on 8 three different occasions you met for two hours with 9 the Department of the Interior and Department of 10 Justice attorneys. Do I have that correct?</p> <p>11 A. Yes, that is correct.</p> <p>12 MR. KERLIN: Okay. And -- and, 13 Mr. Jafeck, I'll ask you this, in the interest of time, 14 but are the electronic documents that were shared with 15 Mr. O'Neal in preparation for his deposition the 16 documents that have been provided to us that have been 17 shared with other witnesses in this case?</p> <p>18 MR. JAFEK: There are some that have 19 been not.</p> <p>20 MR. KERLIN: Okay.</p> <p>21 Q. (BY MR. KERLIN) Okay. And -- and I 22 guess in addition, Mr. O'Neal, you also have some 23 personal experience with some of the subject matter 24 that we're talking about, the DAPL protest and the 25 response to it, right?</p>	<p style="text-align: right;">Page 16</p> <p>1 titles within BIA, deputy assistant director, special 2 agent in charge, as well as assistant director.</p> <p>3 Q. During the time period of the -- of the 4 Dakota Access Pipeline protests, so from approximately 5 August of 2016 through March of 2017, what was your 6 role at BIA?</p> <p>7 A. I was the deputy associate director for 8 field operations.</p> <p>9 Q. And who did you report to at that time?</p> <p>10 A. My first-line supervisor at that time 11 would have been David Little.</p> <p>12 Q. And during the course of the DAPL 13 protest, what was your role with respect to the -- the 14 protest or the protest response?</p> <p>15 A. I had several roles. Early on, in the 16 beginning, it was initially information sharing, 17 making sure that email communication that was coming 18 up to me was making its way up our chain of command.</p> <p>19 At one point, our director decided to 20 respond out directly and spend time at the event, and 21 so as the event progressed, I did physically go up to 22 the area and take his place for a couple weeks when he 23 would be in break.</p> <p>24 But primarily my role was ensuring the 25 information was being shared, and monitoring the --</p>
<p style="text-align: right;">Page 15</p> <p>1 A. Yes, sir, that is correct.</p> <p>2 Q. Okay. Who are you currently employed 3 by?</p> <p>4 A. The U.S. Department of Interior, Bureau 5 of Land Management.</p> <p>6 Q. And what's your title?</p> <p>7 A. I am the director for the Office of Law 8 Enforcement and Security.</p> <p>9 Q. And how long have you had that position?</p> <p>10 A. Since April of this year.</p> <p>11 Q. Okay. Prior to that position, what 12 position did you hold and with which department?</p> <p>13 A. Prior to coming to the Bureau of Land 14 Management, I was the director for the Bureau of 15 Indian Affairs Office of Justice Services.</p> <p>16 Q. And how long were you in that role?</p> <p>17 A. I was in that role for approximately 18 14 months.</p> <p>19 Q. If my -- generally my calendaring is 20 correct, then I think that takes us back to about 21 February of 2021. Would that be about right?</p> <p>22 A. (Deponent nodded head.)</p> <p>23 Q. Okay. What was your prior -- prior role 24 or title?</p> <p>25 A. From 2012 until 2021, I held a number of</p>	<p style="text-align: right;">Page 17</p> <p>1 the situation and our resources nationwide.</p> <p>2 Q. And when you say "information sharing," 3 is that sharing exclusively within the federal 4 government, so within the Department of the Interior 5 or with other federal agencies or departments?</p> <p>6 A. So there was two primary roles that I 7 had: One was establishing a program analyst that 8 would be physically located with the State and Federal 9 partners to make sure that we were sharing 10 information. And so I was the one that established 11 and ensured continued coordination of having a program 12 analyst there with the State.</p> <p>13 And then the executive summary that was 14 developed and ultimately ran the course of the event, 15 I was responsible for establishing that and then 16 ensuring its continued upkeep throughout the duration 17 of the event.</p> <p>18 Q. I want to talk about both of those. You 19 mentioned the program analyst. Was it -- was that a 20 particular person during the course of the DAPL 21 protest response?</p> <p>22 A. There -- there were many, I believe 23 three that I can recall off the top of my head, those 24 being Barry Cossey, Cheryl Sam, and a third one would 25 have been Darren -- I can't recall Darren's last name,</p>

<p style="text-align: right;">Page 18</p> <p>1 but I do recall his name being located in Mr. Cruzan's 2 deposition.</p> <p>3 Q. Was there overlap between these three? 4 In other words, were they working at the same time, or 5 was it that one would work, and then when that 6 individual completed or finished or left the agency, 7 that then it became someone else?</p> <p>8 A. There may have initially, or when one of 9 them was new, may have been some initial overlap just 10 to kind of show them the ropes, what -- what they were 11 doing day-to-day, but that probably would have been 12 limited.</p> <p>13 Additionally, I believe towards the end 14 of the event, some of that was done remotely rather 15 than being physically on-site.</p> <p>16 Q. And what were they doing at the 17 response?</p> <p>18 A. So the program analyst had access to our 19 Incident Management System. And so if the State or 20 Federal partners needed to know what was happening 21 from the reservation side, meaning the Bureau of 22 Indian Affairs law enforcement, any incident that we 23 were responding to or any information they needed out 24 of the DOI systems, those program analysts could 25 provide that.</p>	<p style="text-align: right;">Page 20</p> <p>1 include the Bureau of Land Management, National Parks 2 Service, U.S. Parks Police, U.S. Fish and Wildlife, 3 and each would use the same Incident Management 4 System.</p> <p>5 Q. Okay. Do you know if any of those law 6 enforcement agencies, other than the BIA, were 7 involved with respect to the DAPL protests in any way, 8 shape, or form?</p> <p>9 A. Towards the conclusion of the event, the 10 Bureau of Indian Affairs did request operational 11 support from other DOI law enforcement programs, and I 12 believe there was a period of approximately 30 days in 13 which additional law enforcement officers were sent to 14 the Standing Rock Sioux Reservation from other Bureau 15 law enforcement programs.</p> <p>16 MR. KERLIN: Okay. And I -- I want to 17 pick up at the next exhibit. I'm not sure what was 18 the last exhibit that we used. I don't know if the 19 court reporter has track of that.</p> <p>20 THE REPORTER: One minute.</p> <p>21 MR. KERLIN: Okay.</p> <p>22 THE REPORTER: I believe we went to 825, 23 and then we did enter 832, but not 826 through 831.</p> <p>24 MR. KERLIN: Okay. I can either pick up 25 with 826 and then skip 832, or I can just go to 833.</p>
<p style="text-align: right;">Page 19</p> <p>1 Additionally, their primary role was to 2 share information from the State and other Federal 3 partners back with the Department of Interior and BIA 4 for situational awareness.</p> <p>5 Q. Okay. So kind of like a two-way street: 6 Information would be shared with State and local; and 7 State and local, if there was information that was 8 shared by State and local, then the program analyst 9 could then make sure that BIA had access to that 10 information; is that accurate?</p> <p>11 A. Correct.</p> <p>12 Q. Okay. Would the program analyst have 13 access to -- you said the Incident Management System. 14 Would that be within the -- the BIA system, or would 15 that be broader than that and encompass other federal 16 law enforcement or -- or intelligence gathering?</p> <p>17 A. The Incident Management System is 18 actually owned and operated by the Department of 19 Interior for each of the Bureau law enforcement 20 programs, which included the Bureau of Indian Affairs.</p> <p>21 Q. Okay. And the others, would that 22 include -- I think I've seen it as Parks. Is there 23 a -- is there a Parks police?</p> <p>24 A. Correct. The Department of Interior has 25 a number of law enforcement programs, which would</p>	<p style="text-align: right;">Page 21</p> <p>1 I just don't want to double-mark something. Why don't 2 I just start at 833, if that's okay with everyone.</p> <p>3 MR. JAFEK: That's fine.</p> <p>4 MR. KERLIN: Okay. Mr. Diaz, if you 5 could bring up -- it's ending Bates No. 33754. 6 (Deposition Exhibit 833 was remotely 7 introduced.)</p> <p>8 Q. (BY MR. KERLIN) Mr. O'Neal, this is an 9 email. There's an attachment to it. And I want to 10 give you an opportunity to look through it, but I 11 think this might be, in part, what you were referring 12 to when you mentioned kind of around the tail end of 13 the event.</p> <p>14 If we could maybe just scroll through 15 the document, so if we can continue, there's an 16 attachment. Do you recall Operation Cannonball?</p> <p>17 A. Yes, sir, I do.</p> <p>18 Q. Okay. And I think if we go to this -- 19 if we go to the -- it's the bottom of this page. It 20 says "Assisting Departments and Bureaus"?</p> <p>21 It says "Law" -- excuse me. It says, 22 "Law enforcement assistance will be provided to the 23 OJS from the following departments and bureaus: 24 Department of the Interior (DOI)" --</p> <p>25 MR. JAFEK: Yeah, I'm not -- I'm not</p>

1 seeing that part up on the screen. If you could --
 2 oh, I see. I can scroll. I apologize. I have some
 3 control over it. Thank you.

4 MR. KERLIN: Sure. No problem.

5 Q. (BY MR. KERLIN) So I'm looking at the
 6 section where it says "Assisting Departments and
 7 Bureaus." And so there's the Department of the
 8 Interior. Underneath the Department of the Interior,
 9 I think there's some of the -- the law enforcement
 10 agencies of the Department of the Interior that you
 11 had mentioned, National Park Service, Bureau of Land
 12 Management, and Fish and Wildlife Service. Do you see
 13 that?

14 A. Yes, sir, I do.

15 Q. Okay. Is this what you were referring
 16 to about other law enforcement from the Department of
 17 the Interior that were requested at the tail end or
 18 could have provided some support at kind of the end of
 19 the DAPL protest and the response?

20 A. Yes, sir.

21 Q. Okay. If we can go back to the first
 22 page when it talks about the scope. It says, "In
 23 response to the Standing Rock Sioux Tribe's request
 24 for additional law enforcement officers during DAPL
 25 protests, the BIA have requested Intradepartmental law

1 enforcement aid to assist with public safety and other
 2 law-enforcement-related activities on or near the
 3 Standing Rock Sioux Reservation in North and South
 4 Dakota." Do you see that?

5 A. Yes, sir.

6 Q. So was this Operation Cannonball, was it
 7 created because of a request from the Standing Rock
 8 Sioux Tribe for additional law enforcement, or from
 9 anyone else that was requesting, for instance, State
 10 and local or Corps requesting assistance with law
 11 enforcement support?

12 A. This would have been at the request of
 13 the tribe.

14 Q. Okay. So I guess my question as to why
 15 this wasn't done sooner than --

16 And if we go back to the email. I
 17 apologize to jump around. It's a little harder to do
 18 it remotely than if I had a paper copy to hand you.

19 But if we go back to the first page of
 20 this exhibit, which is the email, okay, the date of it
 21 is February 14, 2017. So the protests were wrapping
 22 up, right?

23 A. That is correct.

24 Q. Okay. And so if my question -- my
 25 question is, "Why wasn't this done sooner?" is the

1 answer that Standing Rock Sioux Tribe didn't ask for
 2 assistance before then?

3 A. So previous, and throughout the duration
 4 of the event, the Department, through the Bureau of
 5 Indian Affairs, did ensure that additional law
 6 enforcement presence was sustained on the reservation
 7 and through a detail of BIA officers throughout the
 8 country to the location.

9 This particular request, I believe, was
 10 along the same time where the tribe was asking
 11 protesters to leave the area. There was concern over
 12 flooding and cleanup efforts. And so the tribe again
 13 made a request for additional law enforcement on the
 14 reservation.

15 Q. Okay. But I just want to understand,
 16 the concern -- was the concern about the flooding some
 17 of the issues that were raised by the executive order
 18 issued by Governor Burgum in order to facilitate
 19 protesters to leave Corps-managed land, or is it for a
 20 different area and different camps?

21 MR. JAFEK: Objection, may call for
 22 speculation; vague and confusing. But you can answer.
 23 A. My understanding is there was concern
 24 from the tribe that any removal of the folks on the
 25 Corps-managed lands would result in them transitioning

24:15-
25:3
602;
611

-3

1 over to reservation land, and that was part of what
 2 was driving the request for additional law
 3 enforcement.

4 Q. (BY MR. KERLIN) Okay. And so Standing
 5 Rock -- the Standing Rock Sioux Tribe did not want
 6 those protesters that were leaving the Corps-managed
 7 land then to end up on their reservation land; is that
 8 accurate?

9 MR. JAFEK: Objection, calls for
 10 speculation, lack of foundation. But you can answer.

11 A. There was concerns within the tribe over
 12 protesters moving on to the reservation.

13 Q. (BY MR. KERLIN) Okay. I think those
 14 are all the questions -- let me write down the exhibit
 15 number on my document -- that I have on that one. So,
 16 yeah, we can take that down.

17 Did BIA ever provide any law enforcement
 18 support with respect to protesters that were located
 19 on Corps-managed land?

20 A. The -- the Bureau of Indian Affairs did
 21 respond off the reservation to Corps-managed lands on
 22 two separate occasions. One was the report -- one was
 23 a report of a man with a gun shooting; and another
 24 actually originated from the reservation of a vehicle
 25 pursuit that traveled into the camp there and the

25:4-12
401-
402;
602

22:15-23:13
401-402

23:19-24:14
401-402

<p style="text-align: right;">Page 26</p> <p>1 Corps-managed lands. Those are the two instances that 2 I'm aware of that the Bureau of Indian Affairs law 3 enforcement responded to Corps-managed lands.</p> <p>4 Q. Okay. Did the Bureau -- excuse me.</p> <p>5 Did the Bureau of Indian Affairs do any 6 type of surveillance or information gathering with 7 respect to camps that were not located on reservation 8 lands, so that would have been -- those that would 9 have been located on Corps-managed land?</p> <p>10 A. If there was any surveillance, it would 11 have been by individual officers, not any surveillance 12 directed by the Department or the Bureau specifically.</p> <p>13 For instance, I am aware that the State 14 had requested from time to time if we would notify 15 them if we saw large caravans of vehicles, and so if 16 our officers were to observe some activity like that, 17 then that would be reported. But there -- we did not 18 have the resources to dedicate to surveillance.</p> <p>19 Q. And so those caravans, would those 20 caravans be originating from Corps-managed land?</p> <p>21 A. That is correct.</p> <p>22 Q. And then headed off that Corps-managed 23 land onto some other area where the protesters would 24 then engage in protest activities?</p> <p>25 A. That is correct.</p>	<p style="text-align: right;">Page 28</p> <p>1 was turned over to the FBI.</p> <p>2 There was, to my understand- -- to the 3 Department's understanding, no investigation or 4 enforcement completed in that incident by the 5 Department of Interior.</p> <p>6 Q. Okay. And with respect to the vehicle 7 from the reserv- -- I guess originated on the 8 reservation land and then ended up traveling over to 9 Corps-managed land, can you tell me a little bit about 10 the details from that incident?</p> <p>11 A. Yes. I believe it originated as a 12 reckless driver on the reservation and proceeded into 13 the camp. The vehicle went through, I believe, a 14 tipi, and the BIA officer that responded saw a number 15 of protesters gathering around the vehicle, assaulting 16 the vehicle, assaulting the driver of the vehicle.</p> <p>17 My understanding, the driver was 18 intoxicated and turned over to the sheriff's office 19 for criminal charges. And there -- the -- there was, 20 again, no enforcement or investigative action there on 21 Corps-managed property, but that was turned over to 22 the State.</p> <p>23 Q. Okay. Okay. We've gone through a -- 24 some different documents, and I got a little ahead of 25 myself, but I mentioned earlier, you're the</p>
<p style="text-align: right;">Page 27</p> <p>1 Q. Okay. With respect to the two separate 2 occasions that you mentioned that you're aware of, you 3 said there was a report of a man with a gun; that 4 there had been a shooting. Do you recall about when 5 that would have occurred in the timeline of the -- of 6 the protests?</p> <p>7 A. I know that would have been 2016. And I 8 know that takes up a lot of time, but I don't -- I 9 don't have that information in -- in front of me at 10 the moment. I could certainly get that date for you, 11 though.</p> <p>12 Q. And was it -- was it an incident that 13 was -- I guess I'm trying to understand the scope of 14 the BIA's involvement in that particular incident.</p> <p>15 Do you know if that was, the report came 16 in and they looked into it and it was resolved in a 17 few hours, or if it was something that had a more 18 lengthy investigation?</p> <p>19 A. After reviewing the incident report, it 20 was clear that BIA officers responded because they 21 were -- they were in fear, if they didn't, there would 22 be loss of life.</p> <p>23 My understanding is they quickly located 24 a -- an individual who they believed was the reported 25 shooter and got him out of there, and it appears he</p>	<p style="text-align: right;">Page 29</p> <p>1 representative on behalf of the Department of the 2 Interior. And I wanted to say, and I should have said 3 this at the outset, if you're answering in a capacity 4 other than as a representative of the Department of 5 the Interior, please, you know, let me know.</p> <p>6 I'm going to go through the topics, some 7 of the -- you know, what we've talked about touches on 8 a couple of the topics, but I did want to make that 9 clear, so that your answers today, unless you indicate 10 otherwise, are as a representative of the Department 11 of the Interior, okay?</p> <p>12 A. Okay. Thank you.</p> <p>13 Q. And when did you first have involvement 14 with the DAPL protests?</p> <p>15 A. So early in 2016 -- I don't have the 16 month directly in front of me -- the Bureau of Indian 17 Affairs was made aware of an incident that occurred 18 off the reservation, and as a result of that incident, 19 the tribal chairman was arrested.</p> <p>20 That was something that -- that was 21 reported up the chain of command, per our policy, 22 any -- anytime a tribal leader or a significant event 23 occurs. And that's when the Department first began 24 monitoring, if you will, the situation that was 25 ongoing.</p>

<p style="text-align: right;">Page 30</p> <p>1 And from that point forward, we slowly 2 began to get additional reports of information, people 3 coming into the area, and that, of course, eventually 4 led to the establishment of the camps there off the 5 reservation.</p> <p>6 MR. JAFEK: Paul, if I could interject 7 and make an objection. I realize I'm a little slow on 8 this, but you -- you asked the witness to say, you 9 know, unless he indicated otherwise, that he was 10 testifying on behalf of the Department of the 11 Interior. I would just like to object to the extent 12 that that cannot expand the scope of the topics on 13 which he's been designated.</p> <p>14 MR. KERLIN: Sure. That's fine. Yeah. 15 MR. JAFEK: Okay. Thanks. 16 MR. KERLIN: I understand your 17 objection.</p> <p>18 Q. (BY MR. KERLIN) Okay. And so -- and 19 just to be clear, when you said -- what we just 20 discussed, when you said you became aware of the DAPL 21 protests and the things that were being heard, that's 22 on behalf of the Department of the Interior and BIA 23 specifically, right?</p> <p>24 A. Yes, sir. 25 Q. Okay. And then the chairman, that would</p>	<p style="text-align: right;">Page 32</p> <p>1 opportunity to look through it before I have a couple 2 of questions about it.</p> <p>3 A. Okay. 4 Q. Okay. Did you make it through to the 5 end?</p> <p>6 A. I did, yes. Thank you. 7 Q. Perfect. If we go to the -- the -- I 8 guess it's going to be the earliest email in the 9 chain, so the one that's going to be at the bottom of 10 page 2 and top of page 3, do you see the email from 11 Chad Harmon?</p> <p>12 A. Yes, sir. 13 Q. Okay. And is he someone that's assigned 14 to the Standing Rock Sioux Tribe or had a 15 responsibility with respect to the Standing Rock Sioux 16 Tribe?</p> <p>17 A. Yes, sir. Chad Harmon would have been a 18 BIA law enforcement officer there on the Standing Rock 19 Sioux Reservation.</p> <p>20 Q. Okay. And if we look at that second 21 paragraph, which starts out -- excuse me, which starts 22 off, "I have also confirmed that their arrests were 23 from protest activities at the Dakota Access Pipeline 24 protest site located approximately 2 1/2 miles north 25 of the Standing Rock Sioux Indian Reservation boundary</p>
<p style="text-align: right;">Page 31</p> <p>1 be Chairman Archambault, was the one who was arrested? 2 A. Yes, sir.</p> <p>3 Q. And so how -- I guess what I'm trying to 4 understand is how high up in the organization of the 5 Department of the Interior did that go with respect to 6 his arrest?</p> <p>7 A. Generally, an arrest of the tribal 8 leader would have made it to the level of the 9 Assistant Secretary for Indian Affairs.</p> <p>10 Q. Okay. Would it have been shared with 11 either the Assistant Secretary or the Secretary of the 12 Department of the Interior?</p> <p>13 A. It would have been shared with the 14 Assistant Secretary of Indian Affairs. I'm unsure 15 whether that would have been shared with the Secretary 16 of the Interior.</p> <p>17 Q. I've seen the acronym ASIA in all caps. 18 Is that an acronym that is used by the Bureau of 19 Indian Affairs to refer to the Assistant Secretary of 20 Indian Affairs?</p> <p>21 A. That is correct.</p> <p>22 Q. Okay. Can we bring up Exhibit 739.</p> <p>23 Mr. O'Neal, this is an exhibit that was 24 marked for -- and used in Mr. Cruzan's deposition.</p> <p>25 It's an email and a forward, and I want to give you an</p>	<p style="text-align: right;">Page 33</p> <p>1 along North Dakota Highway 1806 (off the SRST 2 reservation)." Do you see that?</p> <p>3 A. Yes, sir.</p> <p>4 Q. Okay. And so this email is -- is -- 5 it's forwarded to you, and then you send that on as 6 well. But I guess at least at the onset, the protest 7 activities were not occurring on the Standing Rock 8 Sioux Indian Reservation; is that accurate?</p> <p>9 A. That is correct, yes, sir.</p> <p>10 Q. Okay. And so at this point in time, 11 you're just -- and by "you" I mean BIA -- is just 12 monitoring the situation, fair?</p> <p>13 A. That is correct.</p> <p>14 Q. And if we go to the top email, which is 15 the one from Director Cruzan -- I'm sorry, if we go 16 all the way back to page 1. Director Cruzan, so this 17 is August 14, so a couple days later, asks if there's 18 "Anything new here? I received an email from ASIA 19 that alludes that busloads of people are headed that 20 way." Then he says, "I understand it's off the 21 reservation, but we should start thinking through what 22 happens if we get a request from State and local law 23 enforcement for assistance. I've got no information 24 that it's going to come, but if it does, it will get 25 extremely political very quickly, and that decision</p>

<p style="text-align: right;">Page 34</p> <p>1 will need to have come from me... either way we go. 2 We should plan on discussing tomorrow; just be 3 thinking about it." Do you see that? 4 A. Yes, sir. 5 Q. Okay. The first question is, how did 6 the Assistant Secretary of Indian Affairs have an 7 awareness about a busload of people that were headed 8 towards the -- I guess the protest area that -- do you 9 know where that information was coming from? 10 MR. JAFEK: Objection, goes beyond the 11 scope of the notice. You -- you can answer in your 12 personal capacity. 13 And I would also object on that basis on 14 speculation. 15 A. All the email I'm reading from Darren 16 says "alludes" to a busload of people. I -- I have no 17 record or I haven't seen any documentation that 18 supports the Assistant Secretary received that 19 information. 20 Q. (BY MR. KERLIN) Okay. It then says, in 21 the second sentence, "I understand it's off the 22 reservation, but we should start thinking through what 23 happens if we get a request from State and local law 24 enforcement for assistance." 25 Did you have a discussion with anyone in</p>	<p style="text-align: right;">Page 36</p> <p>1 MR. JAFEK: On 20, I think -- I think 2 that's -- it refers to "provide or withhold law 3 enforcement assistance." I think this is a 4 preliminary question to that, internal discussions, 5 "what happens if we get one." 6 Furthermore, I would object to the 7 extent of topic 20 if you're asking a specific 8 question with respect to a document. That was 9 something that, according to the judge's ruling, 10 should have been provided to us ahead of time. 11 MR. KERLIN: I disagree with that 12 interpretation, but I know we're going to have that 13 discussion tomorrow. 14 MR. JAFEK: That's fine. I just wanted 15 to officially get that objection on the record. 16 MR. KERLIN: Okay. I'm going to go back 17 to asking Mr. -- the witness a question. 18 Q. (BY MR. KERLIN) With respect to that 19 sentence I read, that specific email -- you know, so 20 it's an email from the director of BIA to you, and it 21 says, "if we get that request from State and local law 22 enforcement." 23 So my question is, did BIA ever get that 24 request from State and local for law enforcement 25 assistance at any point during the DAPL protests?</p>
<p style="text-align: right;">Page 35</p> <p>1 Bureau of Indian Affairs, at around time period in 2 August, the start of the protests, about what to do if 3 there is a request from State and local law 4 enforcement for assistance? 5 MR. JAFEK: Objection -- 6 A. Yes, there were multiple -- 7 MR. JAFEK: -- goes beyond the scope of 8 the notice. But you can answer in your -- 9 MR. KERLIN: Okay. Hold on. 10 MR. JAFEK: -- personal capacity. 11 MR. KERLIN: Hold on real quick. I've 12 got an issue with that. So let's look at the notice. 13 MR. JAFEK: Okay. 14 MR. KERLIN: Let's go to -- 15 MR. JAFEK: Yeah, if you could -- if you 16 could point me to the specific topic it relates to, 17 that would -- that would be helpful. 18 MR. KERLIN: Specifically, for -- for 19 Mr. Cruzan, okay, we're talking about 20, 20 -- 20 and 20 21, okay? And then there's also -- so 20, "Decisions 21 by USA to provide or withhold law enforcement 22 assistance . . ." So it's kind of hard to get one 23 that's a little more square than that one. I think 24 two others touch on it, but I don't want to waste time 25 on the record. Is that sufficient?</p>	<p style="text-align: right;">Page 37</p> <p>1 A. No, sir. It's my understanding the 2 department received no request for law enforcement 3 assistance off the reservation. 4 There were a couple instances where the 5 State -- throughout the duration where the State asked 6 us to, I believe, close Highway 1806, and which we 7 assisted on, but it's my understanding we did not 8 receive any formal written request on behalf of the 9 Department from the State. 10 Q. And I'm not limiting it just to written 11 requests, but any requests at all, whether in the form 12 of a request through -- through the Congressional 13 delegate or anything like that that was made to the 14 Department of the Interior, BIA. 15 A. I am aware that the Congressional 16 delegation submitted two separate letters requesting 17 assistance, and I believe those were submitted to the 18 Department of Interior, the Department of Justice, and 19 the Corps of Engineers, I believe. 20 Q. Did BIA ever receive any requests from 21 the Corps of Engineers to provide any type of law 22 enforcement assistance during the DAPL protests? 23 A. No. 24 Q. Did you ever discuss with Mr. Cruzan 25 about what he meant when he said "it [can] get</p>

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<p style="text-align: right;">Page 38</p> <p>1 extremely political very quickly"?</p> <p>2 A. I did not.</p> <p>3 Q. Do you know what he was referring to in</p> <p>4 any discussions you had with him?</p> <p>5 MR. JAFEK: Objection, calls for</p> <p>6 speculation, and I think it goes beyond the scope of</p> <p>7 the notice. But you can answer.</p> <p>8 A. I would assume, because we had a tribal</p> <p>9 chairman arrested and we were hearing that another</p> <p>10 chairman was on his way with a van full of people,</p> <p>11 that that may have been what he was referring to.</p> <p>12 Q. (BY MR. KERLIN) Okay. Can we go to</p> <p>13 Cruzan Exhibit 740. Okay. Mr. O'Neal, this is the</p> <p>14 next email, so --</p> <p>15 MR. KERLIN: Actually, Mr. Diaz, can we</p> <p>16 just show the whole document?</p> <p>17 Q. (BY MR. KERLIN) So if we can go a</p> <p>18 couple pages later, you'll see that this is basically</p> <p>19 the next email in the chain. There's one that's been</p> <p>20 added by you.</p> <p>21 Okay. So if we go to the third page at</p> <p>22 the top, it's the "Anything new . . . I received an</p> <p>23 email from ASIA," that A-S-I-A, that alludes to</p> <p>24 busloads; and then the next email is the one that</p> <p>25 starts on page 1 that is from you to Mr. Cruzan.</p>	<p style="text-align: right;">Page 40</p> <p>1 A. Yes, I was.</p> <p>2 MR. JAFEK: But you could answer.</p> <p>3 A. Yes, sir, I was.</p> <p>4 Q. (BY MR. KERLIN) And were you also aware</p> <p>5 that was something called EMAC that was implemented so</p> <p>6 that law enforcement assistance could come from other</p> <p>7 states and help provide law enforcement support during</p> <p>8 the course of the DAPL protests?</p> <p>9 MR. JAFEK: Same objection.</p> <p>10 Q. (BY MR. KERLIN) Were you aware of that?</p> <p>11 A. Yes, sir, I was.</p> <p>12 Q. Okay. Okay. I want to keep -- I want</p> <p>13 to talk to you a little bit about movement of</p> <p>14 protesters on Corps land, which is one of the topics</p> <p>15 specifically.</p> <p>16 If we can pull up -- it's going to be</p> <p>17 DOI 9107. And I'm going to mark this as Exhibit 30 --</p> <p>18 834, excuse me.</p> <p>19 (Deposition Exhibit 834 was remotely</p> <p>20 introduced.)</p> <p>21 Q. Mr. O'Neal, we put up on the -- yeah,</p> <p>22 we're displaying it. It's a forward of an email.</p> <p>23 There's some information that was provided by email by</p> <p>24 Tom Doering at Morton -- Morton County. Do you see</p> <p>25 that?</p>
<p style="text-align: right;">Page 39</p> <p>1 Okay. Do you recognize this email?</p> <p>2 A. I do.</p> <p>3 Q. Okay. And it's -- it looks like it's</p> <p>4 something that you forwarded that might include</p> <p>5 information from, I guess, Lieutenant Chad Harmon?</p> <p>6 A. That is correct.</p> <p>7 Q. Okay. Okay. You say in that second</p> <p>8 sentence, "Keep in mind if we do get a call to assist,</p> <p>9 it would probably be because a State or local officer</p> <p>10 is facing an immediate imminent threat." What are you</p> <p>11 referring to there?</p> <p>12 A. Nationwide and also at the Standing Rock</p> <p>13 Sioux Reservation, BIA law enforcement at -- during</p> <p>14 this time and historically has always been</p> <p>15 significantly understaffed. And so in general, our</p> <p>16 ability to assist State and local was only in</p> <p>17 emergency situations, and so that was what I was</p> <p>18 referring to there.</p> <p>19 Q. Okay. Were you aware that through the</p> <p>20 course of protests that the State of North Dakota had</p> <p>21 mobilized sheriff deputies and police officers from</p> <p>22 all over the state to respond to law enforcement needs</p> <p>23 during those eight months?</p> <p>24 MR. JAFEK: Objection, goes beyond the</p> <p>25 scope of the notice.</p>	<p style="text-align: right;">Page 41</p> <p>1 A. Yes, sir.</p> <p>2 Q. And then that's forwarded by a Barry</p> <p>3 Case -- Cossey, excuse me, a program analyst. Is</p> <p>4 he one -- he's one of the program analysts that you</p> <p>5 mentioned earlier.</p> <p>6 A. Yes, sir. He was the first.</p> <p>7 Q. And then on top of that is your email</p> <p>8 that you sent out forwarding those. It says, "Let's</p> <p>9 make sure the northern units at least put eyes on the</p> <p>10 campground each hour and report any unusual activity."</p> <p>11 When you say -- when you're referring to</p> <p>12 the northern units, can you tell me what you mean?</p> <p>13 A. Yes, sir. The Standing Rock Sioux</p> <p>14 Reservation is a significantly large reservation, and</p> <p>15 so they had patrol zones. And I believe they had a</p> <p>16 northern and a southern patrol zone. And of course</p> <p>17 the northern units would have been part of that</p> <p>18 northern patrol zone.</p> <p>19 Q. Okay. And when you say, "put eyes on</p> <p>20 the campground," would those be campgrounds that are</p> <p>21 on Corps-managed land?</p> <p>22 A. Yes, that's correct.</p> <p>23 Q. Okay. During the DAPL protests, how</p> <p>24 many BIA law enforcement officers were either assigned</p> <p>25 or provided to the Standing Rock Sioux Tribe and the</p>

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<p style="text-align: right;">Page 42</p> <p>1 related efforts by the BIA?</p> <p>2 A. At -- at the time, it's my understanding 3 there were approximately 20 full-time employee 4 positions, funded positions on the reservation. I 5 believe about half of those, so probably 10 to 12, 6 were actually filled. So there was an additional 12 7 to 18 on detail at any given time to try to remain 8 right around 30 law enforcement officers available.</p> <p>9 I know that number fluctuated greatly 10 throughout the duration of the event up and down based 11 on resource availability nationwide.</p> <p>12 Q. Okay. But just -- I guess to try and 13 have an understanding of -- of how many officers, I 14 just want to make sure I understand your answer.</p> <p>15 So is it accurate to say that there's a 16 total of 30 that would --</p> <p>17 I guess if all roles were filled or all 18 positions were filled, then there would be 19 approximately 30 officers. And is that, you know, 20 during normal time periods or non-DAPL-type protest 21 periods at Standing Rock?</p> <p>22 A. No. I believe at the time, Standing 23 Rock full-time would have had about 20 employees. And 24 so that was likely ten additional law enforcement 25 officers more than what they would normally have.</p>	<p style="text-align: right;">Page 44</p> <p>1 would have been disseminated to?</p> <p>2 A. Yes. The primary purpose was to have 3 a -- one place where all information could be 4 collected and disseminated. That would be a -- a very 5 broad update of activities occurring.</p> <p>6 And so it began with an update of what 7 was going on, and then each day, additional 8 information would be added to that. So if you -- if 9 you will, it was a rolling daily update, and so new 10 information was generally added, highlighted in red, 11 and all the older information in black. And so the 12 newest information would be at the top of the 13 document.</p> <p>14 That document was shared throughout the 15 Bureau of Indian Affairs up to the Assistant Secretary 16 of Indian Affairs, who I believe used that document to 17 periodically brief the Secretary's office.</p> <p>18 Q. Okay. If we look at this document 19 prepared by Morton County law enforcement, or the law 20 enforcement -- I'm going to call it a summary 21 document, but "Ops Briefing" is, I think, what they 22 called it.</p> <p>23 If we go to the second page of it, it 24 talks about current operations, and then underneath 25 that it has "Summary of Law Enforcement Resources"</p>
<p style="text-align: right;">Page 43</p> <p>1 Q. Okay. Okay. I want to show you one 2 other document while we're talking about the movement 3 and -- and things of that nature.</p> <p>4 So DOI 9745. And this will be marked as 5 Exhibit 835.</p> <p>6 (Deposition Exhibit 835 was remotely 7 introduced.)</p> <p>8 Q. So this is an email. There's an 9 attachment to it we'll look through in a minute, but 10 it's an email from Darren Smith, who I think is 11 another one of the program analysts you mentioned.</p> <p>12 A. Yes. He was the Darren I couldn't 13 remember from earlier, Darren Smith.</p> <p>14 Q. And then we have -- if we go to this 15 page, "Law Enforcement Sensitive," do you see this?</p> <p>16 A. Yes.</p> <p>17 Q. Okay. And -- and this is something that 18 would have been prepared by State and local about 19 what's going on?</p> <p>20 A. That is correct.</p> <p>21 Q. Okay. Was there a -- you mentioned an 22 executive summary that would have been -- that you 23 would have had some involvement with during the course 24 of the protests. Can you tell me what was the purpose 25 of that executive summary, and then also who that</p>	<p style="text-align: right;">Page 45</p> <p>1 Available." I think I know the answer to this, and I 2 think it's clear from your testimony earlier, but I 3 just want to make it clear.</p> <p>4 And then also could we pull up the one 5 underneath it, "Summary of other resources available."</p> <p>6 I don't see anything on here, so a 7 summary of what the operations briefing was, and this 8 is dated October 18 of 2016, that there's any 9 resources from Department of the Interior or -- or 10 Bureau of Indian Affairs. Would you agree with me 11 that there weren't law enforcement resources that were 12 made available to State and local?</p> <p>13 A. So there were certainly Bureau of Indian 14 Affairs officers available on the reservation. 15 However, resource dependent, unsure whether or not 16 they would have been available.</p> <p>17 But they're clearly not indicated on 18 the -- the document here.</p> <p>19 Q. And I guess my question is, is that 20 because they would have been limited in some way to 21 only responding or conducting law enforcement 22 activities on the Standing Rock Sioux Indian 23 Reservation land as opposed to any other land?</p> <p>24 MR. JAFEK: Objection, may call for a 25 legal conclusion.</p>

<p style="text-align: right;">Page 46</p> <p>1 Q. (BY MR. KERLIN) You can answer if you 2 know.</p> <p>3 A. I apologize, Paul and Tim. I thought 4 you would indicate after an objection whether to 5 proceed with answering.</p> <p>6 So, my -- my assumption on this, Paul, 7 is that the State either didn't ask the Department or 8 the Bureau for what our numbers were, or weren't aware 9 of what our numbers were. But either way, clearly 10 whoever prepared the document didn't list those BIA 11 resources that may or may not be available.</p> <p>12 Q. Let me ask you this: If the call came, 13 would BIA have been able to provide off-reservation 14 law enforcement support in a nonemergency role, 15 capacity?</p> <p>16 MR. JAFEK: Objection, calls for 17 speculation, may call for a legal conclusion. You can 18 answer.</p> <p>19 And, also, Jason, unless I tell you you 20 can't answer, go ahead and answer. But I'll try to 21 remember to say you can answer so you can answer.</p> <p>22 THE DEPONENT: Okay. Thank you, Tim.</p> <p>23 A. Yes. There would have been officers 24 available. However, I can tell you that each of those 25 would have been a case-by-case determination. And so,</p>	<p style="text-align: right;">Page 48</p> <p>1 to the -- it's another forwarded email chain. The 2 first one is from JH Wilson, Chief Prosecutor, 3 Standing Rock Sioux Tribe.</p> <p>4 Eventually this works its way to you, 5 but he says, "Contrary to our conversation last week, 6 Judge Swallow has asserted the Tribal Court's 7 jurisdiction over the North Camp, as well as Rosebud 8 and Sacred Stone. This means if Security from the 9 North Camp brings people to the Reservation and 10 asserts that a crime has occurred in the North Camp, 11 you are empowered to arrest that individual." Do you 12 see that?</p> <p>13 A. Yes, sir.</p> <p>14 Q. Okay. And we're going to work our way 15 up. That's forwarded to -- it goes from Jeff Ward to 16 Eddie Smart, and then Eddie Smart to William McClure 17 and to you.</p> <p>18 And then you send something that there's 19 a redaction. Part of this is redacted. It says 20 "Gentlemen, Redacted." And then it says, "Eddie, Make 21 sure our guys do not arrest for tribal offenses off 22 the reservation." Do you see that?</p> <p>23 A. Yes, sir.</p> <p>24 Q. Okay. In this email, are you 25 instructing -- I'm looking for Eddie's last name, and</p>
<p style="text-align: right;">Page 47</p> <p>1 you know, while there would have been officers there, 2 as you probably saw in my earlier email, we would 3 likely have only got a request or responded to a 4 request in an emergency situation.</p> <p>5 Q. (BY MR. KERLIN) Okay. Can we pull 6 up -- it's DOI 27254, and I'll mark that as 7 Exhibit 835 [sic], I think we're up to.</p> <p>8 MR. JAFEK: Did we mark -- was the last 9 one was with DOI 9745, was that marked with an exhibit 10 number?</p> <p>11 MR. KERLIN: 834.</p> <p>12 MR. JAFEK: I have 834 as 9017 [sic].</p> <p>13 MR. KERLIN: So am I one off?</p> <p>14 MR. JAFEK: I think so.</p> <p>15 MR. KERLIN: Okay.</p> <p>16 MR. JAFEK: Maybe the court reporter can 17 help us.</p> <p>18 MR. DIAZ: Correct. 835 is 9745, and 19 836, which was called right now, is 27254.</p> <p>20 MR. KERLIN: Okay. Thank you for that. 21 So 836. Thank you for clarifying that.</p> <p>22 (Deposition Exhibit 836 was remotely 23 introduced.)</p> <p>24 Q. (BY MR. KERLIN) Mr. O'Neal, I'm showing 25 you an email that we have up on the screen. If we go</p>	<p style="text-align: right;">Page 49</p> <p>1 I don't seem to see it at the moment. But are you 2 instructing Mr. Smart that there shouldn't be arrests 3 for tribal offenses when they're not on Standing Rock 4 Sioux Indian Reservation land?</p> <p>5 A. Yes, sir, that is correct.</p> <p>6 Q. Okay. So just to be clear, BIA, based 7 on what your directive is here, would not be able to 8 make arrests off of the reservation, so that would 9 include -- my question would be, would that include 10 protesters along 1806, protesters on Corps-managed 11 land, and protesters at other sites that wouldn't be 12 on the reservation or on Corps land?</p> <p>13 A. A little bit of a complicated question, 14 Paul. The B- -- the tribe's criminal jurisdiction is 15 limited to offenses that occur on the reservation. 16 The Bureau of Indian Affairs' authority is also 17 limited to crimes that occur on the reservation. The 18 BIA could make an arrest off the reservation for a 19 crime that occurred on the reservation.</p> <p>20 Q. Okay. And then just to kind of complete 21 that, BIA, is it accurate, could not make arrests for 22 crimes that occurred off of reservation land?</p> <p>23 MR. JAFEK: Objection, calls for a legal 24 conclusion. But you can answer.</p> <p>25 A. BIA's statutory authority does include</p>

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701/702 calls for legal concl.

<p style="text-align: right;">Page 50</p> <p>1 assisting, upon request, any state, local, tribal, or 2 federal law enforcement agency with the enforcement of 3 their laws and regulations. So I do believe we could, 4 upon request, assist another agency, which would 5 include enforcement and arrest.</p> <p>6 Q. (BY MR. KERLIN) Great. Would the 7 request have to be directly to BIA, or could the 8 request go to, for instance, the Secretary of the 9 Department of the Interior or another federal agency 10 and work its way down to BIA?</p> <p>11 MR. JAFEK: Objection, calls for a legal 12 conclusion. But you can answer.</p> <p>13 A. In -- in general, we've always asked the 14 request be in writing, with the exception if it's an 15 emergency situation. But I can tell you it's standard 16 practice if -- if a law enforcement agency in an 17 emergency situation requests our assistance, resource 18 dependent, we try to assist where we can.</p> <p>19 MR. KERLIN: I tell you what, we've been 20 going about an hour. Why don't we take a ten-minute 21 break, and then we'll pick up from there, if that's 22 okay with everyone. So maybe -- it's 11- -- it would 23 be 11:15 my time, 10:15 Mountain.</p> <p>24 THE VIDEOGRAPHER: Going off the record. 25 The time is 5:05 p.m. UTC, 10:05 a.m. Mountain.</p>	<p style="text-align: right;">Page 52</p> <p>1 anyone at the Department of the Interior?</p> <p>2 A. I apologize, Paul. When you say 3 "decisions made or actions taken," that was in regards 4 to the special-use permit again?</p> <p>5 Q. Yes, sir.</p> <p>6 A. Okay. No, I -- the Department did not 7 have any actions or decisions regarding the 8 special-use permit.</p> <p>9 Q. Okay. Okay. Thank you. We can take 10 that down.</p> <p>11 During the DAPL protests, did you 12 have -- did you receive any guidance or direction from 13 Larry Roberts?</p> <p>14 MR. JAFEK: And I would object that 15 that's beyond the scope of the topic, as far as I can 16 tell. But you can answer in your personal capacity.</p> <p>17 A. It is my understanding that Director 18 Cruzan had discussions with Assistant Secretary 19 Roberts. I do not believe any specific direction was 20 provided.</p> <p>21 Q. (BY MR. KERLIN) Okay. What about with 22 respect to Secretary Jewell? What about her 23 involvement with the DAPL protests and the protest 24 response, any guidance or direction that -- that was 25 received from her?</p>
<p style="text-align: right;">Page 51</p> <p>1 (Recess taken 10:05 a.m. to 10:15 a.m. 2 Mountain Standard Time.)</p> <p>3 THE VIDEOGRAPHER: We're back on the 4 record. The time is 5:15 p.m. UTC, 10:15 a.m. 5 Mountain.</p> <p>6 Q. (BY MR. KERLIN) Mr. O'Neal, back after 7 a short break. Are you able to continue?</p> <p>8 A. Yes, sir.</p> <p>9 Q. Any testimony that you would add to, 10 change, or modify that you've already given today?</p> <p>11 A. No, sir.</p> <p>12 Q. Okay. I want to pull up Exhibit 803, 13 which is the notice. And if we can go to page 5, I 14 want to talk to you about one of the topics in 15 particular, topic No. 6. "Public statements made by 16 government officials about any application for DAPL 17 Special Use Permits or any decisions made or actions 18 taken regarding such applications."</p> <p>19 With respect to the Department of the 20 Interior, Mr. O'Neal, were there any public statements 21 made by the Department of the Interior about 22 applications for a DAPL special-use permit?</p> <p>23 A. No, sir.</p> <p>24 Q. Were there any decisions made or actions 25 taken regarding -- regarding such applications by</p>	<p style="text-align: right;">Page 53</p> <p>1 MR. JAFEK: Same objection. You can 2 answer.</p> <p>3 A. In my personal capacity, I would only be 4 able to reflect on what was in her deposition as far 5 as her involvement, which it does not appear she 6 provided any direction.</p> <p>7 Q. (BY MR. KERLIN) Okay. I want to talk 8 to you about topic 21. It's "The decision to issue 9 and the contents of the Joint Statements released on 10 September 9, 2016, and October 10, 2016, from the 11 Department of Justice, Department of the Interior, and 12 Department of the Army."</p> <p>13 I want to pull up first the earliest one 14 in time, which would be the September 9, 2016, one. 15 It's previously been marked as Exhibit 494.</p> <p>16 Okay. And this is the email that 17 forwards it. It has the Department of the Interior 18 seal there on the left. You'll see the last sentence 19 says, "See below a joint statement by the Department 20 of the Army, the Department of Justice, and the 21 Department of the Interior."</p> <p>22 Before we get to the statement, 23 Mr. O'Neal, are you familiar with this statement?</p> <p>24 A. I am, yes, sir.</p> <p>25 Q. Did you have any involvement with this</p>

ND OBJ:
Introduces
new material

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1 statement before preparing for your deposition?

2 A. I did not.

3 Q. Were you aware of this -- the joint
4 statement at the time it was issued?

5 MR. JAFEK: I would object to the extent
6 that this goes beyond the scope of the notice, but he
7 can answer in his personal capacity.

8 A. Yeah, if this was an email sent to all
9 of DOI employees, Paul, I likely would have received
10 it, but I didn't recall seeing it prior to preparation
11 for the deposition.

12 Q. (BY MR. KERLIN) Okay. And -- and it's
13 a statement that was issued -- if we go down now to
14 the statement, it's -- it's issued after there was a
15 decision from the District Court on the U.S. Corps --
16 U.S. Army Corps of Engineers. It was a lawsuit
17 between Standing Rock Sioux Tribe and the U.S. Army
18 Corps of Engineers.

19 My first question is -- and I think it's
20 directly on topic of the -- and it's not
21 controversial, about the -- it's topic 21 -- who made
22 the decision to issue this joint statement on behalf
23 of the Department of the Interior?

24 A. So, Paul, our solicitor's office was
25 able to research both the September and, I believe,

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1 in a representative capacity: Who made the decision
2 to issue this joint statement on behalf of the
3 Department of the Interior?

4 MR. JAFEK: And that's fine. You can
5 answer that, Mr. O'Neal.

6 A. Paul, I -- my understanding, and in
7 reviewing the information our solicitor's office was
8 able to research, was that the press release was
9 reviewed by a number of people, and so it did not
10 clearly indicate that there was one sole person from
11 the Department of the Interior that cleared the
12 language in the press release, but, rather, it went
13 through a number of offices before being returned.

14 Q. (BY MR. KERLIN) Okay. Is there someone
15 at the Department of the Interior that would have to
16 have a certain level of authority to permit the
17 Department of the Interior to be part of the
18 statement? In other words, would it have to be
19 someone of a particular status or a particular office
20 in order to be able to say, "This is, in fact, a
21 statement on behalf of the Department of the
22 Interior"?

23 MR. JAFEK: And I would object that that
24 goes beyond the scope. But you can answer,
25 Mr. O'Neal.

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1 October joint statements, and those statements
2 generally went through the Department's communication
3 office and made the rounds through senior leadership
4 and the Secretary's office before ultimately, I
5 believe, going back to the Corps of Engineers.

6 And from the communication that I
7 reviewed, it was a review and a clearance, meaning the
8 Department didn't have any edits to the release.

9 Q. Okay. So just so that I understand
10 correctly, one of the other agencies or departments,
11 so Department of Justice or Department of Army, would
12 have written it up, and then the Department of the
13 Interior agreed to it? Is that accurate?

14 MR. JAFEK: I -- I would object to the
15 extent that Mr. O'Neal is only designated with respect
16 to topic 21 as to the identity of whose decision
17 within the Department of the Interior it was to issue
18 each of those statements.

19 But you can answer, Mr. O'Neal, in your
20 personal capacity.

21 MR. KERLIN: Well, hold on. I don't
22 really want to go there yet. I'm just trying to
23 follow up on what he just testified about when I asked
24 him who him made the decision.

25 Q. (BY MR. KERLIN) And so, again, this is

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1 MR. KERLIN: I disagree with the
2 objection, but, yeah, we can take that up later.

3 A. My -- my understanding -- my
4 understanding is the Department's deputy director of
5 communications would have been the individual that
6 communicated and was responsible for any type of press
7 release and circulating those to the appropriate
8 offices for review.

9 I'm -- I'm unaware of any official
10 department policy that would designate someone with
11 the sole authority of making that determination or
12 release.

13 Q. (BY MR. KERLIN) Okay. But by issuing
14 this statement, it is, I guess, an authorized
15 statement on behalf of the Department of the Interior,
16 right?

17 A. Correct.

18 Q. And so that the Department of the
19 Interior would be bound by the words contained in it,
20 correct?

21 MR. JAFEK: Objection, vague and
22 ambiguous. But you can answer.

23 MR. KERLIN: I want to rephrase the
24 question, then.

25 Q. (BY MR. KERLIN) This statement that's

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<p style="text-align: right;">Page 58</p> <p>1 on Department of the Interior -- it has the seal, and 2 it says, "Joint Statement from the Department of 3 Justice, the Department of the Army, and the 4 Department of the Interior." Is the Department of the 5 Interior manifesting in it to be bound by what's 6 contained on the very words they put out there and 7 said it's their statement?</p> <p>8 MR. JAFEK: Same objection. You can 9 answer.</p> <p>10 A. Paul, I believe the Department's, as far 11 as Interior's role in this release, was primarily 12 assisting the tribe and the other federal agencies. 13 And so in that respect, yes, you know, they -- the 14 information in the release would be accurate.</p> <p>15 Q. (BY MR. KERLIN) And I understand, and I 16 want to make sure it's clear with Mr. Jafek.</p> <p>17 MR. KERLIN: So part of our topic, we 18 contend, includes input into this press release, 19 edits, words, who typed it up, that sort of thing, 20 what was considered before the words were put on the 21 page.</p> <p>22 Is it my understanding, Mr. Jafek, that 23 Mr. O'Neal is not going to be providing testimony on 24 behalf of the Department of the Interior?</p> <p>25 MR. JAFEK: He's been designated with</p>	<p style="text-align: right;">Page 60</p> <p>1 Interior specifically, so --</p> <p>2 MR. JAFEK: Yeah. Could we -- could 3 we -- Paul, if possible, could we go off the record 4 for about five minutes? And I would like to have a 5 brief conversation with Mr. O'Neal, and maybe we can 6 move forward on that issue as a result of that 7 conversation.</p> <p>8 MR. KERLIN: Yeah, sure.</p> <p>9 MR. JAFEK: Okay. So we'll go off the 10 record.</p> <p>11 THE VIDEOGRAPHER: Going off the record. 12 The time is 5:28 p.m. UTC, 10:28 a.m. Mountain. 13 (Recess taken 10:28 a.m. to 10:31 a.m. 14 Mountain Standard Time.)</p> <p>15 THE VIDEOGRAPHER: We are back on the 16 record. The time is 5:31 p.m. UTC, 10:31 a.m. 17 Mountain.</p> <p>18 Q. (BY MR. KERLIN) Mr. O'Neal, we're back 19 after a break. You had an opportunity to talk with 20 counsel. Anything you want to add to your answers to 21 any of the questions today?</p> <p>22 A. Yes, Paul. In respect to the joint 23 statement issued September 9, information our 24 solicitor's office was able to research is that DOI 25 Solicitor Hilary Tompkins emailed Sam Hirsch, who is</p>
<p style="text-align: right;">Page 59</p> <p>1 respect to topic 21 only with respect to the identity 2 of whose decision it was within the Department of the 3 Interior to -- to issue the joint statement.</p> <p>4 So I think those specific questions you 5 have about, sort of, input, edits, those sorts of 6 things, I think it goes beyond the scope of that.</p> <p>7 Of course, this became clear in the 8 deposition of Ms. Kelley Gipe. We have a dispute as 9 to whether -- as to the -- as to the scope of topic 21 10 and -- in general, and I think we discussed that on 11 the record extensively in that other deposition.</p> <p>12 MR. KERLIN: Okay. I understand your 13 objection. I understand that you're hereby limiting 14 the witness to testify anything further than the 15 individual. Now he said a number of individuals were 16 involved, so I don't think I have a clear answer on 17 that.</p> <p>18 I do have a clear answer on who would 19 have been authorized, I believe, but I still don't 20 think I have specifically the person who said -- you 21 know, green-lighted it. And so I don't think I've 22 gotten an answer to that.</p> <p>23 And I don't want to give Mr. O'Neal a 24 hard time, but I just think we're entitled to know who 25 authorized it on behalf of the Department of the</p>	<p style="text-align: right;">Page 61</p> <p>1 the principal deputy attorney general at ENRD, on that 2 morning stating that DOI leadership had cleared the 3 final statement that Sam had sent earlier.</p> <p>4 And so the leadership at that time that 5 that clearance had gone through was, of course, Hilary 6 Tompkins; Tommy Beaudreau, who is the chief of staff; 7 Michael Connor, who is the deputy secretary; Larry 8 Roberts, principal deputy assistant secretary of 9 Indian Affairs; and Blake Androff, who is the director 10 of communications.</p> <p>11 And from -- from the review of the email 12 traffic, it appeared that each of those individuals 13 had reviewed this statement.</p> <p>14 The Secretary was notified a release was 15 going out, but was not involved in the review or 16 clearance of that release.</p> <p>17 Q. Okay. Thank you for that answer.</p> <p>18 Was -- was there any -- and this is 19 based upon an answer that you provided earlier, but 20 was there any edits that were made by the Department 21 of the Interior to the joint statement, to your 22 knowledge?</p> <p>23 MR. JAFEK: I'm going to object that 24 that goes beyond -- beyond what he's been designated 25 for.</p>

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<p style="text-align: right;">Page 62</p> <p>1 But you can answer in your personal 2 capacity.</p> <p>3 A. I -- I am not aware, Paul.</p> <p>4 Q. (BY MR. KERLIN) Okay. Would the 5 individuals that you mentioned with respect to DO -- 6 Department of Interior leadership -- strike that.</p> <p>7 Okay. I want to talk to you a little 8 bit about the contents of Exhibit 494. If we go to 9 page 2 of it. All right.</p> <p>10 So there's a paragraph that starts, 11 "Finally, we . . . support the rights of all Americans 12 to assemble and speak freely."</p> <p>13 The last sentence of that paragraph 14 says, "The Departments of Justice and the Interior 15 will continue to deploy resources to North Dakota to 16 help state, local, and tribal authorities, and the 17 communities they serve, better communicate, defuse 18 tensions, support peaceful protest, and maintain 19 public safety."</p> <p>20 My question is, with respect to the 21 resources that were deployed to North Dakota to help 22 state, local, and tribal authorities, what was 23 provided with respect to those resources from the 24 Department of the Interior?</p> <p>25 A. Paul, as I mentioned earlier, the</p>	<p style="text-align: right;">Page 64</p> <p>1 I want to move on to the next exhibit 2 that -- that was a joint statement, which is going to 3 be at Exhibit 821. Mr. O'Neal, are you familiar with 4 this document?</p> <p>5 A. Yes, sir.</p> <p>6 Q. Okay. And this is the -- the joint 7 statement from the Department of Justice, Army, and 8 Interior, dated Monday, October 10, 2016.</p> <p>9 Still -- still on topic 21: Can you 10 tell me who made the decision about issuing this press 11 release?</p> <p>12 A. Yes, sir, if I could, similar to the 13 last one, the solicitor's office review and our 14 internal records.</p> <p>15 So Wyn Hornbuckle from the Department of 16 Justice communications office sent the communication 17 to Jessica Kershaw, who is the Department of 18 Interior's deputy director of communications, and 19 other federal communication contacts with this 20 proposed statement.</p> <p>21 And then Jessica Kershaw from DOI 22 replied that DOI was okay with the wording and the 23 statement.</p> <p>24 Based on the email traffic, it looks 25 like Hilary -- again Hilary Tompkins, Tommy Beaudreau,</p>
<p style="text-align: right;">Page 63</p> <p>1 additional law enforcement resources to the Standing 2 Rock Sioux Tribe; as well as key leadership from the 3 Bureau of Indian Affairs Office of Justice Services to 4 that area; and then finally the assignment of the 5 program analyst to aid in information sharing there, 6 were the additional resources that were currently 7 deployed and deployed throughout the duration of the 8 event.</p> <p>9 Q. Got it. And with respect to the law 10 enforcement agents from the Department of the Interior 11 from BIA, those would have been primarily to focus 12 upon the Standing Rock Sioux Indian Reservation land 13 as opposed to the Corps-managed land, correct?</p> <p>14 A. That is correct.</p> <p>15 Q. But the analyst you mentioned, the 16 program analyst, that person or persons, because I 17 know there was more than one, did share information 18 back and forth between State and local and your -- 19 your Information Management System for BIA?</p> <p>20 A. That is correct, yes, sir.</p> <p>21 Q. Okay. I have some other questions about 22 the content of this exhibit; however, your counsel has 23 said that you're not designated on the content, just 24 the decision. I think you've answered that for us, 25 which I appreciate.</p>	<p style="text-align: right;">Page 65</p> <p>1 and Larry Roberts reviewed that statement, so several 2 from the -- the previous -- and, again, the Secretary 3 was notified but was not involved in the review or 4 clearance.</p> <p>5 Q. Okay. Did Jessica Kershaw make any 6 edits, changes, or modifications to this statement?</p> <p>7 MR. JAFEK: I would object that that's 8 beyond the scope of what he's been designated for for 9 topic 21.</p> <p>10 But you can answer in your personal 11 capacity.</p> <p>12 A. I am unaware, Paul.</p> <p>13 Q. (BY MR. KERLIN) Okay. Wyn Hornbuckle, 14 he works for the Department of Justice; is that 15 correct?</p> <p>16 A. That is correct, yes, sir.</p> <p>17 Q. Okay. So DOJ sent the draft to Jessica 18 Kershaw; is that -- I was just trying to understand 19 your answer.</p> <p>20 A. Yes. The research I was -- received 21 says "proposed," so I'm assuming that could be 22 replaced with "draft."</p> <p>23 MR. KERLIN: Okay. Okay. And with 24 respect to the -- with respect to questions regarding 25 the contents, is this witness also not designated</p>

<p style="text-align: right;">Page 66</p> <p>1 to -- to answer questions about the contents of 2 Exhibit 821 and the press release issued on 3 October 10, 2016, on behalf of the three agencies?</p> <p>4 MR. JAFEK: That's correct. To the 5 extent that the contents -- you know, the contents of 6 the joint statements per se.</p> <p>7 You know, if there's -- if there's parts 8 of the joint statement that overlap with, you know, 9 information in other topics, you know, just because 10 it's in here doesn't mean that he couldn't answer it 11 if it was part of some other topic.</p> <p>12 MR. KERLIN: Okay.</p> <p>13 Q. (BY MR. KERLIN) Well, let me ask you on 14 821, while we have it up here, it's the paragraph that 15 starts, "The Army." It says, "The Army continues to 16 review issues raised by the Standing Rock Sioux Tribe 17 and other Tribal nations and their members and hopes 18 to conclude its ongoing review soon."</p> <p>19 Were there any issues raised by the 20 Standing Rock Sioux Tribe to the Bureau of Indian 21 Affairs or the Department of the Interior? I'm just 22 trying to understand why it was limited to the Army, 23 if you know.</p> <p>24 MR. JAFEK: And I would say beyond -- 25 beyond the scope. But if you know in your personal</p>	<p style="text-align: right;">Page 68</p> <p>1 know, it's from all -- all the agencies, but then 2 there's specific things that are attributed to "the 3 Army does this" or "the Army is doing that," as 4 opposed to "the Department of the Interior and BIA." 5 But I would assume, since it does involve tribal 6 consultation and -- and Native Americans, that BIA 7 would, in fact, be involved with that, so -- okay. 8 Makes sense.</p> <p>9 All right. Let's -- let's keep moving.</p> <p>10 With respect to the information 11 gathering that BIA was doing with respect to tribal -- 12 excuse me, with respect to the protesters' movements, 13 was there any observed increase in the intensity of 14 the protests or the number of protesters after the 15 September 9, 2016, joint statement was issued?</p> <p>16 A. I would have to review back through the 17 materials. I do know, as part of that daily briefing, 18 there was information reported up regarding estimated 19 size of the camps and -- and activity observed from 20 the Bureau of Indian Affairs from the reservation 21 side. But I would -- would need to review a couple of 22 those dates directly after those releases were made.</p> <p>23 Q. And would that be the same for the 24 October 10, 2016, release?</p> <p>25 A. Yes, sir.</p>
<p style="text-align: right;">Page 67</p> <p>1 capacity, go ahead.</p> <p>2 A. Paul, only in my preparation and review 3 of the Secretary's deposition and some of her 4 communications. And, you know, I think she did a good 5 job of representing that the Department's role in this 6 matter was really making sure that all executive 7 branch agencies were fulfilling their responsibilities 8 in consultations with tribes.</p> <p>9 Q. (BY MR. KERLIN) And that kind of 10 targets a little bit of the last paragraph in this 11 press release, which is, "We also look forward to a 12 serious discussion regarding" -- excuse me, "during a 13 series of consultations, starting with a listening 14 session in Phoenix on Tuesday, on whether there should 15 be nationwide reform on the Tribal consultation 16 process for these types of infrastructure projects."</p> <p>17 That is very similar to the testimony 18 that Ms. Jewell provided, correct, about listening 19 sessions and consultation with the tribes?</p> <p>20 A. That -- that is correct. And, 21 generally, the Department of the Interior and Bureau 22 of Indian Affairs take a lead role in -- in those 23 consultations.</p> <p>24 Q. And that makes sense to me. I was 25 just -- you know, part of this statement was -- you</p>	<p style="text-align: right;">Page 69</p> <p>1 Q. Okay. Okay. I want to look at topic 2 No. 10. And this states, "Actions considered and 3 taken by U.S.A. in response to the use or occupation 4 of Corps-managed lands by someone without either 5 written permission or a Special Use Permit." And 6 there's some limitations to it with respect to the 7 area for the United States Corps of Engineers, their 8 Northwest Division.</p> <p>9 With respect to the Department of the 10 Interior, were there any actions taken or considered 11 in response to the use or occupation of Corps-managed 12 land by someone without either written permission or a 13 special-use permit?</p> <p>14 A. No, there were no actions taken or 15 considered by the Department of Interior.</p> <p>16 Q. And is that -- I mean, I kind of want to 17 understand the why, if -- if you know. Is that 18 because it was Corps-managed land and it wasn't, for 19 instance, Standing Rock Indian Reservation land? In 20 other words, it was not something that would kind of 21 fall inside of the BIA purview?</p> <p>22 A. That -- that is correct. The Department 23 would be interested from a situational awareness, 24 particularly with the events that were happening at 25 the time, but would not have a direct role in -- in</p>

 69:9-15 401-402
 69:16-70:
 10 for
 completeness if
 objection above
 overruled

<p style="text-align: right;">Page 70</p> <p>1 that special-use permit.</p> <p>2 Q. That would, in essence --</p> <p>3 It's Corps-managed land, and so the BIA</p> <p>4 doesn't have responsibility for law enforcement</p> <p>5 activities on, for instance, Corps-managed land --</p> <p>6 A. Right.</p> <p>7 Q. -- other than what you mentioned earlier</p> <p>8 on a couple of -- you know, there's some limitations</p> <p>9 to that, but in general, right?</p> <p>10 A. That is correct.</p> <p>11 Q. Okay. Okay. Let's take a look at</p> <p>12 topic 13, just below it. "Actions taken by the</p> <p>13 United States . . . during the DAPL Protests regarding</p> <p>14 Corps-managed land used or affected by the DAPL</p> <p>15 Protests to," and I'm going to go through each of the</p> <p>16 individual subcategories, the first being "protect the</p> <p>17 health and safety of persons on Corps-managed land."</p> <p>18 Anything that the Department of the Interior did with</p> <p>19 respect to "protect the health and safety of persons</p> <p>20 on Corps-managed land"?</p> <p>21 A. Paul, outside of the two instances I --</p> <p>22 I related where our law enforcement did respond to</p> <p>23 those -- those instances, the Department did not take</p> <p>24 any -- any additional actions.</p> <p>25 Q. And I believe -- I just want to make</p>	<p style="text-align: right;">Page 72</p> <p>1 Anything other than those two that we've</p> <p>2 discussed?</p> <p>3 A. No, sir, nothing other than those two.</p> <p>4 Q. The fourth is "to clear Corps-managed</p> <p>5 lands in the first quarter of 2017." Any -- any</p> <p>6 actions taken by the Department of the Interior or</p> <p>7 BIA?</p> <p>8 A. No, sir, no actions by the Department of</p> <p>9 Interior or BIA.</p> <p>10 Q. And then the last is, "prevent the use</p> <p>11 of Corps-managed lands as a camp, base, or staging</p> <p>12 area from which potential -- potentially dangerous or</p> <p>13 unlawful activities may have been conducted on or off</p> <p>14 Corps-managed lands." Any actions taken by the</p> <p>15 Department of the Interior or BIA in that regard?</p> <p>16 A. No, sir, no actions by DOI or BIA.</p> <p>17 Q. I want to talk to you about 14. This is</p> <p>18 "Any requests" -- "Any requests made by the United --</p> <p>19 by the U.S. for assistance from State or local</p> <p>20 authorities to remove persons from Corps-managed land</p> <p>21 or to deal with the actions of persons on or off</p> <p>22 Corps-managed land."</p> <p>23 Are you aware of any such requests made</p> <p>24 by the United States for assistance from State and</p> <p>25 local authorities to do those activities?</p>
<p style="text-align: right;">Page 71</p> <p>1 sure I have this answer correct. Did the Corps of</p> <p>2 Engineers ever ask BIA or the Department of the</p> <p>3 Interior to take any such actions on Corps-managed</p> <p>4 land during the protests?</p> <p>5 A. No, sir, they did not.</p> <p>6 Q. Okay. I just want to make sure you</p> <p>7 understood that. I wasn't talking about the two</p> <p>8 instances you mentioned, but other than those, was</p> <p>9 there any Corps -- any Corps requests to BIA or</p> <p>10 Department of Interior to help in "protect the health</p> <p>11 and safety of persons on Corps-managed land"?</p> <p>12 A. No, sir, there were no requests to the</p> <p>13 Department of Interior or the Bureau of Indian</p> <p>14 Affairs.</p> <p>15 Q. Okay. The next category, it would be</p> <p>16 "Actions taken by the United States," Department of</p> <p>17 the Interior or BIA, "to protect Corps-managed lands</p> <p>18 from environmental harm or degradation." Any such</p> <p>19 actions taken?</p> <p>20 A. No, sir. There were no actions by the</p> <p>21 Department of Interior.</p> <p>22 Q. "Prevent unlawful or unsafe activities</p> <p>23 on Corps-managed lands." We've talked about the two</p> <p>24 instances you mentioned, which could, I guess, in my</p> <p>25 opinion, be unlawful or unsafe.</p>	<p style="text-align: right;">Page 73</p> <p>1 A. Paul, I do recall a communication, I</p> <p>2 believe, from Corps of Engineers to the State.</p> <p>3 However, I don't have that in front of me, and I</p> <p>4 believe it was -- I don't believe it was necessarily a</p> <p>5 request for assistance as much as it was just</p> <p>6 identifying that the State did have jurisdiction in a</p> <p>7 trespass situation.</p> <p>8 But as I was not part of what the</p> <p>9 Department of Interior would normally be involved in,</p> <p>10 other than briefly seeing the document, that I -- I</p> <p>11 just recall something likely exists in some of the</p> <p>12 materials that I reviewed.</p> <p>13 Q. Okay. But nothing specific to the</p> <p>14 Department of the Interior, the Department -- or,</p> <p>15 excuse me, of -- or Bureau of Indian Affairs?</p> <p>16 A. No, sir. DOI did not make any requests</p> <p>17 for assistance from State or local authorities to</p> <p>18 remove persons from Corps-managed lands.</p> <p>19 Q. Okay. I want to talk to you a little</p> <p>20 bit about 15. "Communications between the</p> <p>21 United States and with, to, or from persons on</p> <p>22 Corps-managed lands related to the DAPL protests, or</p> <p>23 representatives or spokespersons for such persons."</p> <p>24 There's -- there's a number of -- I'm</p> <p>25 sure there's a number of communications that occurred.</p>

<p style="text-align: right;">Page 74</p> <p>1 I have a couple of exhibits I would like to -- to go 2 over with you that I think will kind of focus the 3 questions I have.</p> <p>4 Let me start with DOI 11791. I believe 5 we're up to 837, so this will be Exhibit 837.</p> <p>6 (Deposition Exhibit 837 was remotely 7 introduced.)</p> <p>8 Q. Are you familiar with who Rosa Salamanca 9 is?</p> <p>10 A. I did not recall her name until I was 11 reviewing that portion of Darren Cruzan's deposition, 12 and that refreshed my memory. I -- I still don't 13 recall having much interaction with her.</p> <p>14 Q. Okay. She sent an email on the 23rd of 15 February [sic] that's up on the screen right now. 16 "North Camp leadership has stepped forward to ask for 17 a problem-solving dialogue regarding specific concerns 18 about their camp. General Dohrmann and Colonel 19 Gerhart have indicated a willingness to attend. Would 20 BIA and the Sheriff's Office be interested in 21 attending -- in attending the meeting?"</p> <p>22 Would -- okay. Well, and I guess what 23 I'm trying to understand is why Rosa -- how Rosa 24 Salamanca gets involved from the Department of Justice 25 rather than, I guess, BIA. I mean, isn't this the</p>	<p style="text-align: right;">Page 76</p> <p>1 Do you recall attending such a dialogue 2 session, or whatever it was referred to, meeting? 3 A. I do not. I do not believe such a 4 meeting occurred.</p> <p>5 Q. Okay. So you expressed availability, 6 but then, I guess, it never actually went forward? 7 A. That -- that is correct, not to my 8 recollection.</p> <p>9 Q. Okay. Okay. The next one I would like 10 to talk to you about, it's DOI 11084. And this is now 11 going to be Exhibit -- where is that running list -- 12 eight thirty- -- so we're at 838.</p> <p>13 (Deposition Exhibit 838 was remotely 14 introduced.)</p> <p>15 Q. And this is an email chain in 16 February of 2017. I want to go to the last page, so 17 it would be the earliest email in the thread.</p> <p>18 You know, I think we need to see who it 19 came from as well, because I believe it's from Justin 20 Wendland. It looks like he's at BIA. Do you know who 21 he is?</p> <p>22 A. Yes, sir. Justin was a law enforcement 23 officer for BIA.</p> <p>24 Q. Okay. And then you're on this email, as 25 well as a number of other individuals from BIA. It</p>
<p style="text-align: right;">Page 75</p> <p>1 type of thing that BIA would typically do when it's 2 communicating with tribal members and related issues?</p> <p>3 MR. JAFEK: Objection, calls -- calls 4 for speculation, and the question is vague and 5 ambiguous. But you can answer.</p> <p>6 A. So, Paul, I think, as we found 7 throughout this -- this event, a number of the 8 individuals were not tribal, and -- and the BIA did 9 not have an office similar to the office that Rosa was 10 from. And as, you know, this was Corps of Engineers 11 property, DOJ was -- was probably assisting, my 12 assumption is, because the Corps of Engineers also 13 didn't have an office similar to that.</p> <p>14 Q. (BY MR. KERLIN) Okay. Do you recall -- 15 if we go to the top, that first email.</p> <p>16 Well, I guess I did skip one. We have 17 Rosa -- the one that was just up. "Rosa, I may not be 18 back in time, but I have cc'd DADS' McClure and 19 O'Neal." So that one might be referring to you.</p> <p>20 A. Yes, sir.</p> <p>21 Q. So then -- then we go back to the first 22 page -- there we go -- Friday, September 23 of 2016. 23 And you sent an email that said, "Hi Rosa, I'll be 24 getting up to speed on Monday and in the area the 25 remainder of the week. I can attend."</p>	<p style="text-align: right;">Page 77</p> <p>1 says, "Good Morning, Just a heads up... Chief and I 2 met with and served LaDonna Allard the BIA notice of 3 trespass and violation paper regarding the land area 4 identified as Sacred Stone." Do you know what 5 Mr. Wendland is referring to when he talks about the 6 BIA notice of trespass violation paper?</p> <p>7 A. Vaguely, yeah. I do recall reviewing 8 a -- a trespass notice that I believe was put together 9 by the BIA's regional office regarding an unauthorized 10 use of reservation land in the area.</p> <p>11 Q. Okay. And in your experience, so -- 12 with BIA, is that something that -- so who -- I guess 13 what I'm saying is, for this type of notice of 14 trespass, have you been involved in one of these 15 notice of trespass violations on other occasions?</p> <p>16 A. I -- I have not. And trespass, 17 particularly on the reservation with the complex 18 jurisdictional matrix throughout the United States, 19 trespass is a very difficult issue, and I did not prep 20 for this deposition specifically to talk about 21 trespass in this situation. I apologize.</p> <p>22 Q. Okay. Yeah, it's just -- it's one of 23 the communications with the -- with the individuals.</p> <p>24 I guess if we can turn -- let's also -- 25 we're going to go to what I think might be the letter</p>

<p style="text-align: right;">Page 78</p> <p>1 you're referring to. It's DOI 11686. We'll mark that 2 as 839.</p> <p>3 (Deposition Exhibit 839 was remotely 4 introduced.)</p> <p>5 Q. It's an email from you, and it says 6 "Monty" -- this is March 21, 2017. "Monty, With Dave 7 Armstrong's initial opinion being the property is 8 Indian Country under 18 U.S.C. 1161 I'm looping in 9 Darren Cruzan to shed some light on how they went 10 about getting eviction/trespass notices issued through 11 the BIA realty as, dependent on upon the tribe's 12 wishes, this may be of interest to the tribe as a 13 route to pursue before the camps grow any larger. I'm 14 attaching one of the letters from DAPL that BIA issued 15 for reference."</p> <p>16 What I would like to do is flip to -- 17 it's a number of pages down. Let's see, one, two -- 18 well, it's -- in the corner it's Bates-labeled 11698, 19 and it's got -- it's on the letterhead of the 20 United States Department of the Interior.</p> <p>21 This is the attachment to your email. 22 Is this the -- the notice of trespass that would have 23 been related to the DAPL protest that you were 24 referring to in the other exhibit we looked at, 25 Exhibit 838?</p>	<p style="text-align: right;">Page 80</p> <p>1 A. That is correct.</p> <p>2 Q. Okay. If we go down three -- it's the 3 last full paragraph on this page. It says, "An Indian 4 owning a beneficial interest in trust property may 5 still be held liable for trespass on that property." 6 And then there's a quote: "It is well-established 7 that one who commands, instigates, encourages, 8 advises, countenances, cooperates in, aids, or abets 9 the commission of a trespass is liable as a 10 co-trespasser with the person actually committing the 11 trespass, and is liable as a principal to the 12 statement extent and in the same manner as if he had 13 performed the wrongful act himself." Do you see that?</p> <p>14 A. Yes, sir.</p> <p>15 Q. Okay. So this letter is informing DAPL 16 protesters, if they come onto and did, in fact, come 17 onto Standing Rock Reservation land, that they are 18 trespassing, and informing them of the potential 19 consequences of being in trespass. And then on the 20 next page there's a whole litany of the different 21 damages and consequences of doing so.</p> <p>22 Do you recall that this was given to 23 Ms. LaDonna Allard?</p> <p>24 MR. JAFEK: I would object to the 25 question as vague and ambiguous. Specifically it's --</p>
<p style="text-align: right;">Page 79</p> <p>1 A. Yes, sir, that's correct.</p> <p>2 Q. Okay. And in that first sentence it 3 says, "It has come to our attention that you are 4 allowing individuals to move onto trust property 5 without proper authorization or without a valid lease. 6 This notice is being issued to you regarding a 7 possible trespass violation for utilizing trust 8 property without approved authorization or a valid 9 lease contract."</p> <p>10 So this is telling them that they are 11 trespassing because they don't have a valid lease 12 contract, right?</p> <p>13 MR. JAFEK: And I would object that this 14 goes beyond the scope of the notice. But you can 15 answer in your personal capacity.</p> <p>16 A. And I apologize, Paul, can you repeat 17 your question?</p> <p>18 Q. (BY MR. KERLIN) Sure. That this is the 19 notice -- I mean, it says the sentence, "This notice 20 is being issued to you regarding a possible trespass 21 violation for utilizing trust property without 22 approved authorization or a valid lease contract."</p> <p>23 So since they didn't have authorization, 24 they didn't have a lease contract, this notice of 25 trespass was being issued to them, right?</p>	<p style="text-align: right;">Page 81</p> <p>1 it's compound as to that last question, as to whether 2 it was given to Ms. Allard. I don't -- I would only 3 object to that on the basis that it goes beyond the 4 scope of the notice. And you can answer in your 5 personal capacity.</p> <p>6 A. So, Paul, I'm unaware that Ms. Allard 7 would have received a similar copy of this trespass 8 notice as this one, I believe, was addressed to -- to 9 someone else.</p> <p>10 But I think these likely would have only 11 gone to tribal members that were residing there. It 12 was not my understanding they were going to 13 protesters.</p> <p>14 Q. (BY MR. KERLIN) I see. So it was going 15 to the tribal members because the tribal members were 16 allowing or encouraging individuals to then camp or 17 occupy the Standing Rock Indian Reservation without 18 permission or a lease; is that right?</p> <p>19 MR. JAFEK: Objection, it goes beyond 20 the scope of the notice. But you can answer in your 21 personal capacity.</p> <p>22 A. I -- I do not know, Paul.</p> <p>23 Q. (BY MR. KERLIN) Okay. So it's -- but 24 it's going to tribal members, I believe is what you 25 said. They would have been directed to tribal</p>

<p>1 members. Okay.</p> <p>2 A. And if I could add one point of 3 clarification to that. My assumption is it would have 4 went to people that were tribal members living on the 5 reservation, as I -- I don't believe we had 6 information as far as who the protesters were, names, 7 for instance, to issue such a notice to -- to 8 individual people that were not landowners or 9 occupiers there.</p> <p>10 Q. I see. And so it would be directed to 11 those that might be instigating, encouraging, 12 advising, or cooperating or aiding others in 13 trespassing on the land, like the tribal members?</p> <p>14 A. That is correct.</p> <p>15 Q. Okay. A couple more here. DOI 26858 16 will be the next one.</p> <p>17 (Deposition Exhibit 840 was remotely 18 introduced.)</p> <p>19 Q. Okay. This is an email that was sent -- 20 it looks like it was sent to you, and then you 21 responded to it, although I don't see the -- everyone 22 on the forward email as to who it went to.</p> <p>23 If we go down to the first one in time, 24 or the earliest, you know, January 26, "Update of 25 today's events." The first -- and I'm just going to</p>	<p>Page 82</p> <p>1 question one more time?</p> <p>2 Q. Sure, sure. It's just that, you know, 3 what this says that was updating as of today's events, 4 if we can get the date -- there it is, January 26, 5 2017, that as of that date, the Corps of Engineers had 6 not issued an -- an eviction notice at this time for 7 those protesters on Corps-managed land, and Department 8 of Interior was aware of that.</p> <p>9 A. Yes. Based on this email, the 10 Department would have been aware, correct.</p> <p>11 Q. Okay. And your email on the top of this 12 then says, "Thank you sir. Thanks, Jason O'Neal."</p> <p>13 A. Yes, sir, that's correct.</p> <p>14 Q. Okay. All right. I want to go to the 15 next one. It's DOI 19811 [sic]. Okay. We're still 16 pulling that one up. And we'll mark that as 17 Exhibit 841.</p> <p>18 MR. DIAZ: I'm sorry. Did you say 19 19811?</p> <p>20 MR. KERLIN: No.</p> <p>21 MR. DIAZ: I only have 10.</p> <p>22 MR. KERLIN: That's it, 10. I'm sorry. 23 I was looking at the second page.</p> <p>24 MR. DIAZ: Oh, okay. Okay. Got it. (Deposition Exhibit 841 was remotely</p>
<p>1 read the first sentence, in the interest of time. 2 "The state is not going to set checkpoints on the 3 reservation."</p> <p>4 The second is, "The state is planning to 5 start the process to open up the bridge as early as 6 tomorrow." It goes through that.</p> <p>7 And then the third one, it says, "The 8 Corps of Engineers have not issued an eviction notice 9 at this time." Do you see that?</p> <p>10 A. Yes, sir.</p> <p>11 Q. And then it says, "They are attempting 12 to have DOJ write the eviction notice and have the 13 U.S. Attorney sign it. The Corps has a contract in 14 place to have anything left behind by protesters 15 removed from the site."</p> <p>16 Did the Department of the Interior know 17 that the Corps of Engineers had not issued an eviction 18 notice to the protesters for those that were on Corps 19 land as of January 26, 2017?</p> <p>20 A. I'm sorry, Paul. I'm a little bit 21 confused. I can't see the date of this email again. 22 But you're -- you're asking -- so you're 23 saying that Mathis sent this, notifying that they -- 24 that there hasn't been an eviction notice yet, and 25 you're asking if the Department -- can you ask your</p>	<p>Page 83</p> <p>1 introduced.)</p> <p>2 Q. (BY MR. KERLIN) Okay. Let's -- I think 3 the best way to do this -- I guess that we'll go to 4 the -- let's go to the press release. Yeah, we'll 5 work our way up from the last page.</p> <p>6 So there's this press release, and it 7 looks like, if we go to the prior page, it's on a 8 distribution of some sort. Are you familiar with the 9 as-ia_opa@bia.gov distribution?</p> <p>10 A. I don't recall what OPA stood for.</p> <p>11 Q. Okay. Well, but, I mean, is that 12 something that -- I'm just trying to understand if 13 it's kind of like disseminated from -- oh, okay. 14 Well, it looks like --</p> <p>15 A. I think that's probably like public 16 affairs, maybe.</p> <p>17 Q. But is that something that goes out 18 to -- that you would typically receive?</p> <p>19 A. I don't believe so. It looks like this 20 has been forwarded, kind of, a couple times. So, you 21 know, if it's -- if it's a news release, sometimes 22 those -- like if it came out from the Assistant 23 Secretary's office, sometimes those would go to all 24 Indian Affairs employees. If it's a news release 25 coming out at the department level, sometimes those</p>

<p style="text-align: right;">Page 86</p> <p>1 would go out to all department employees.</p> <p>2 I -- this appears to be a news release</p> <p>3 from the Assistant Secretary of Indian Affairs, so</p> <p>4 that may or may not have gone out to all BIA and BIE</p> <p>5 employees.</p> <p>6 Q. Okay. Can we go to the release, and</p> <p>7 then we'll come back to that -- that first email. So</p> <p>8 the release in its -- "For Immediate Release,</p> <p>9 February 3, 2017." The "Acting Assistant Secretary</p> <p>10 Michael Black on the Standing Rock Sioux Tribe and BIA</p> <p>11 Law Enforcement Assistance."</p> <p>12 It starts off and says, "The Bureau of</p> <p>13 Indian Affairs today responded to the Standing Rock</p> <p>14 Sioux Tribe's request for BIA law enforcement support</p> <p>15 and will assist them in closing the protest camps</p> <p>16 within the Standing Rock Reservation boundary."</p> <p>17 We looked at a document earlier that I</p> <p>18 think we marked as -- where did I put it? -- well, it</p> <p>19 was Operation Cannonball. Do you remember that, when</p> <p>20 we were talking about that earlier?</p> <p>21 A. Yes.</p> <p>22 Q. Okay. So there's the press release, and</p> <p>23 then that's dated a little bit later. Is that what</p> <p>24 was formulated in response to what the directive is</p> <p>25 here from the assistant acting secretary?</p>	<p style="text-align: right;">Page 88</p> <p>1 Q. Okay. Let me pull up 10611. We'll make</p> <p>2 it 842.</p> <p>3 (Deposition Exhibit 842 was remotely</p> <p>4 introduced.)</p> <p>5 Q. Okay. If we go to the second email in</p> <p>6 this, it's an email chain, but we don't have it up</p> <p>7 yet. There we go.</p> <p>8 It says, from Mar- -- excuse me, Marcia</p> <p>9 Good. "I've lost my copy of the January 1981 memo</p> <p>10 between BIA and FBI on responding to civil disorder</p> <p>11 in," it says, "IC . . . can either of you send me a</p> <p>12 copy? Thanks, m."</p> <p>13 And if we go to the front page, you then</p> <p>14 say, "Hi Marcia. It's attached... Thanks Darren."</p> <p>15 Oh, "It's attached... Thanks Darren," and then</p> <p>16 "Thanks."</p> <p>17 Okay. And if we go to the third page,</p> <p>18 we can look at the PDF, the attachment. Have you seen</p> <p>19 this document before?</p> <p>20 A. Yes, sir, I have.</p> <p>21 Q. Okay. So it -- it's a -- I mean, it's a</p> <p>22 memo, it appears to be -- or could you tell me what it</p> <p>23 is? Let's -- let's go with it that way.</p> <p>24 A. Yeah. I believe it's an MOU between the</p> <p>25 Department of Justice and the Department of Interior</p>
<p style="text-align: right;">Page 87</p> <p>1 A. And I apologize, Paul. What -- what</p> <p>2 directive are you referring to?</p> <p>3 Q. Well, I'm just referring to, I guess,</p> <p>4 this public statement. I'm calling it a directive,</p> <p>5 but it seems like -- well, I guess he's just saying</p> <p>6 that the Bureau of Indian Affairs responded to their</p> <p>7 request, so that there is some action being taken by</p> <p>8 BIA for law enforcement support for closing protest</p> <p>9 camps, but it's clear that, I mean, what he says is</p> <p>10 "within the Standing Rock Reservation boundary."</p> <p>11 A. That -- that's correct. This more than</p> <p>12 likely reflects the Operation Cannonball that we had</p> <p>13 looked at earlier.</p> <p>14 Q. Yeah. I think we marked it 832, just</p> <p>15 for the record. But okay. Got it.</p> <p>16 On the top of this, the top email, it</p> <p>17 says -- it's an email from you, and it's Friday,</p> <p>18 February 3. It says, "Wow, she is really reading into</p> <p>19 it." Do you know what you were referring to?</p> <p>20 A. No, I don't. And it's kind of odd that</p> <p>21 there's not any more in the email chain, so perhaps</p> <p>22 Darren and I were on a -- on a phone call together and</p> <p>23 some comments were made and I sent him a -- a message</p> <p>24 through email, but I -- I don't recall why I would</p> <p>25 have wrote that.</p>	<p style="text-align: right;">Page 89</p> <p>1 regarding any federal response to civil disorder on</p> <p>2 Indian reservations. And specifically, you know, the</p> <p>3 support that DOJ could provide to the Department of</p> <p>4 Interior for on-reservation disorder control.</p> <p>5 Q. Okay. So if we go to page -- we're</p> <p>6 going to go to the one -- it's the third page of this</p> <p>7 memo, and it -- that second full paragraph says,</p> <p>8 "Whenever" -- it starts "Whenever." "Whenever any</p> <p>9 civil disorder reaches a point beyond the control</p> <p>10 capabilities of local and Bureau of Indian Affairs</p> <p>11 resources, the Department of the Interior may elect to</p> <p>12 request assistance from the Department of Justice."</p> <p>13 Do you see that?</p> <p>14 A. Yes, sir.</p> <p>15 Q. Is that what you're referring to about</p> <p>16 the Department of the Interior can request assistance</p> <p>17 from the Department of Justice?</p> <p>18 A. Yes, sir.</p> <p>19 Q. Do you know if any such request was made</p> <p>20 in this situation, so with respect to the DAPL protest</p> <p>21 response, any request by the Department of the</p> <p>22 Interior for assistance from the Department of</p> <p>23 Justice?</p> <p>24 A. No, sir, there were no requests made</p> <p>25 from DOI to DOJ for assistance under this MOU.</p>

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<p style="text-align: right;">Page 90</p> <p>1 Q. Thank you. That's all I have for that 2 one. And I think I have one more.</p> <p>3 It's going to be DOI 11094. I think 4 that's going to be 843.</p> <p>5 (Deposition Exhibit 843 was remotely 6 introduced.)</p> <p>7 Q. Do you recall that there was an 8 executive order issued by Governor Burgum in -- and 9 this would have been in February of 26 -- excuse me, 10 2017? It was an evacuation order?</p> <p>11 A. Yes, sir, I do recall this.</p> <p>12 Q. Okay. It says, if we go to the third 13 paragraph in a letter issued February 3, "the Corps 14 also ordered those camping on federal property to 15 vacate to prevent injuries and significant 16 environmental damage in the likely event of flooding 17 in the area."</p> <p>18 I -- I guess my question is, is -- this 19 isn't about vacating Standing Rock Indian Reservation 20 land, right? I mean, this is about Corps-managed land 21 being vacated?</p> <p>22 A. That -- that's correct, Paul. My -- my 23 assumption, because Barry would have been our program 24 analyst sharing information to us received from the 25 State, that this would be information that he -- he</p> <p style="text-align: right;">Page 91</p> <p>1 received through part of that joint information 2 sharing. And he -- so he would be briefing this back 3 to DOI leadership that was coming from the State.</p> <p>4 Q. Okay. And -- and it's not so much that 5 BIA -- that makes sense, and I appreciate that answer.</p> <p>6 And I guess just to understand it, it's 7 along the same lines that you had testified earlier: 8 That BIA was monitoring what's going on, and then it's 9 not that you were necessarily going to be taking any 10 specific actions for the Corps-managed land to address 11 environmental or helping evacuate or remove those 12 individuals that were on Corps-managed land; it's more 13 of BIA keeping a -- kind of a situational awareness. 14 And then later we look at some of the documents -- 15 or that, you know, you were working in tandem with 16 this about the Operation Cannonball, about how it may 17 affect Standing Rock Reservation land. Do I kind of 18 have that correct?</p> <p>19 A. Yes, sir, that is correct.</p> <p>20 MR. KERLIN: Okay. Okay. Let's do 21 this. Can we take a five-minute break? We can kind 22 of keep it a short one. I understand -- well, let's 23 go off the record, if that's okay.</p> <p>24 THE VIDEOGRAPHER: Going off the record.</p> <p>25 The time is 6:19 p.m. UTC, 11:19 a.m. Mountain.</p>	<p style="text-align: right;">Page 92</p> <p>1 (Recess taken 11:19 a.m. to 11:27 a.m.)</p> <p>2 Mountain Standard Time.)</p> <p>3 THE VIDEOGRAPHER: We're back on the 4 record. The time is 6:27 p.m. UTC, 11:27 a.m. 5 Mountain.</p> <p>6 Q. (BY MR. KERLIN) Mr. O'Neal, we're back 7 after a short break. Able to continue?</p> <p>8 A. Yes, sir.</p> <p>9 Q. Anything else that you need to add to 10 the testimony you've already given or -- or change?</p> <p>11 A. No, sir.</p> <p>12 Q. Okay. I would like to pull up DOI 9144. 13 Mark this as Exhibit 844.</p> <p>14 (Deposition Exhibit 844 was remotely 15 introduced.)</p> <p>16 Q. It's an email chain. So let's go to the 17 second email first, and then it's -- it's one that you 18 received, and then you have a response to.</p> <p>19 Okay. So the subject of this is 20 "ESF-13: Preemptive preparations for Hurricane 21 Matthew." And it's a -- it's from a, looks like, 22 Candace Shea at DOI. "Good afternoon, As you are 23 likely aware, Hurricane Matthew is now a Category 4 24 storm, currently located approximately 220 miles 25 south/southeast of Kingston, Jamaica. Several</p> <p style="text-align: right;">92:14-94:12 401-402; 611</p> <p style="text-align: right;">Page 93</p> <p>1 forecasted tracks show Matthew as having a significant 2 impact on the eastern seaboard of the United States by 3 this weekend.</p> <p>4 "Due to the projected impact of the 5 storm, and the potential for 'worse-case scenario' of 6 a landfall by this weekend, the ATF has asked all 7 ESF-13 stakeholders to begin searching their ranks for 8 deployable Federal LEOs. This is a preparatory 9 measure; there is no activation at this time."</p> <p>10 Then it says, "Please provide me with an 11 estimated number of LEOs your Bureau may be able to 12 commit NLT COB Wednesday, October 5." I think NLT 13 means "no later than" and COB means "close of 14 business."</p> <p>15 But my question for you is, does -- does 16 the Department of the Interior receive these at 17 different times about a request for availability of 18 law enforcement support?</p> <p>19 MR. JAFEK: Objection, it goes beyond 20 the scope of the notice. But you can answer in your 21 personal capacity.</p> <p>22 A. Yes, sir. ESF stands for Emergency 23 Support Function 13, which is the federal government's 24 law enforcement response. That's managed by ATF.</p> <p>25 Anytime there's a potential ESF</p>
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<p style="text-align: right;">Page 94</p> <p>1 deployment, the ATF will reach out to all federal law 2 enforcement agencies to begin preplanning for 3 available law enforcement officers for those 4 disasters. And that is something the department 5 receives very often.</p> <p>6 Q. (BY MR. KERLIN) Okay. Do you know if 7 there was any such ESF-13 that was issued -- I don't 8 know if that's the right word, or "put out" is maybe a 9 different way to say it -- with respect to the DAPL 10 protests?</p> <p>11 A. No, sir. There was no ESF-13 request 12 for DAPL.</p> <p>13 Q. Okay. And just so that I understand 14 ESF-13, if that did go out, then that would have been 15 to all federal agencies to see who was available? Or 16 is that just limited to DOI?</p> <p>17 MR. JAFEK: Objection, goes beyond the 18 scope of the notice. But you can answer in your 19 personal capacity.</p> <p>20 A. All A- -- ATF is the SME for that 21 ESF-13, so that would be a question for DOJ.</p> <p>22 Q. (BY MR. KERLIN) Okay. Sounds good. 23 So then if we go to the top email -- 24 well, there's one that says, "Can we support this?" at 25 the very bottom of that page -- or the top of that</p>	<p style="text-align: right;">Page 96</p> <p>1 is a long chain, and so I'm going to try and get 2 through it relatively quickly.</p> <p>3 But let's go to the last page, and we'll 4 work our way up ultimately to your email.</p> <p>5 It says -- December 9, the one I see, it 6 says, "Francis, We would like to schedule a meeting 7 with Secretary -- with the Secretary to acknowledge 8 the work of BIA Officers at Standing Rock. My sense 9 is that there will be about 10 officers that will be 10 invited to attend. Can you please let us know 11 available dates and times?"</p> <p>12 We will work our way up. "Best 13 times" -- excuse me. "Best dates to make this happen 14 are January 6 and 13. Please let me know if you'd 15 like us to hold some time."</p> <p>16 We go on up to the next one. "Great. 17 Thank you. Let's target January 6th for a meeting 18 with the OJS team. Do you need a list of names from 19 Darren?"</p> <p>20 Your response is, "Yes." I don't know 21 if you can see that. That was actually on the -- just 22 underneath it. "Yes."</p> <p>23 A. Yes.</p> <p>24 Q. And then if we go -- if we come up to 25 the prior page, "Mr. Roberts, Below are the names of</p>
<p style="text-align: right;">Page 95</p> <p>1 page.</p> <p>2 And then your response at the top, it 3 said, "No, we wouldn't."</p> <p>4 Well, I guess the first -- what you send 5 is, "Would we need to support a full 25-man team? If 6 so, probably not with the DAPL protest operation."</p> <p>7 And then the response above that, "No, 8 we would not. The smallest element is a 5-man squad. 9 They would accept one or two squads, if we could field 10 them."</p> <p>11 So in response to this ESF-13, I guess 12 BIA didn't have the resources to be able to try and 13 commit someone, or at least is that what -- what 14 you're indicating in your email?</p> <p>15 A. That's correct, Paul. As I indicated 16 earlier, nationwide and historically, we've been -- or 17 the BIA has always been short-staffed. And just 18 getting the detail of this number of people to the 19 Standing Rock Sioux Reservation was already a major 20 impact on our resources nationwide.</p> <p>21 Q. Okay. If we could look at DOI 13061. 22 And this will be 845.</p> <p>23 (Deposition Exhibit 845 was remotely 24 introduced.)</p> <p>25 Q. I want to -- there's a number of -- this</p>	<p style="text-align: right;">Page 97</p> <p>1 the folks we recommend we bring in to meet with the 2 Secretary on the 6th. It's difficult to name just a 3 few because so many have performed extraordinarily 4 well."</p> <p>5 There's a number of BIA individuals. 6 Are these all individuals that were involved in the 7 DAPL protest response on behalf of the BIA?</p> <p>8 A. Yes, sir.</p> <p>9 Q. Is that first one, for BIA Special Agent 10 in Charge William "Bill" McClure, is that the -- it 11 says "Rifle Incident." Was that the discharge of the 12 firearm that you mentioned?</p> <p>13 A. Yes, sir, it was.</p> <p>14 Q. Okay. And then if we go down to the 15 fourth, it's BIA Police Officer Brian Clouston, the 16 "individual driving a stolen car sped into the camp 17 and crashed into a tipi." Was that the other incident 18 you were -- you had mentioned about starting on 19 reservation land and then ending up on Corps land?</p> <p>20 A. Yes, sir.</p> <p>21 Q. Got it. Okay. And then if we go back 22 another email, it's -- it's, I believe, to you and to 23 Bill. "Narrowed down list" to meet with the 24 Secretary. It's directed to you.</p> <p>25 And then if we go to the top --</p>

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<p>1 Oh, I'm sorry. I've skipped one. I'm 2 sorry. I -- I left off one important detail. The 3 second sentence says, "Can you guys please see to it 4 that these guys are notified, and make travel 5 arrangements to be here [by] Friday, January 6, for a 6 10:00 a.m. to 11:00 a.m. meeting with Secretary Sally 7 Jewell and other DOI leadership."</p> <p>8 And now we go to the top email, which is 9 from you. And it says, "Absolutely, I am certain they 10 will be excited and honored to be recognized."</p> <p>11 Did -- did this meeting occur?</p> <p>12 A. I don't recall, Paul. I know it wasn't 13 a meeting that I participated in, and I don't recall 14 whether or not it happened or not.</p> <p>15 Q. Okay. And that was going to be my next 16 question, did you participate in the meeting or attend 17 it. It sounds like you didn't.</p> <p>18 A. No, sir.</p> <p>19 Q. Okay. Now, I guess the reason why I 20 found it --</p> <p>21 Well, let me just put it this way: The 22 protests weren't over in -- I mean, this is 23 December 22 of 2016. The protests didn't conclude for 24 another month, month and a half, right?</p> <p>25 A. That is correct.</p>	<p>1 introduced.)</p> <p>2 Q. So Justin Wendland forwards a -- a link. 3 It says, "This release just came out a couple hours 4 ago...." And the title of the link is "BIA to provide 5 more officers to assist Standing Rock Sioux Tribe in 6 closing protest camps on tribe land."</p> <p>7 I think we looked at that press release 8 from the Assistant Secretary, but my question is about 9 your response to it. And this is February 3, 2017. 10 "Thanks Justin, have you or anyone from the EOC seen 11 or corresponded with Heidi lately? This is new info 12 for me." Do you know who Heidi is?</p> <p>13 A. I do not.</p> <p>14 Q. Okay. And then also, the cc on this -- 15 well, strike that.</p> <p>16 Do you know what EOC stands for?</p> <p>17 A. Typically, that would stand for 18 emergency operations center, which I'm assuming would 19 be the State, but that's just a guess.</p> <p>20 Q. Okay. Got it. Sounds good.</p> <p>21 Let's go to DOI 11645. Mark this as 22 847.</p> <p>23 (Deposition Exhibit 847 was remotely 24 introduced.)</p> <p>25 Q. This is a -- this is a forward of an</p>
Page 99	Page 101
<p>1 Q. I mean, did it seem a little premature 2 to be kind of, I guess, celebrating or being 3 recognized before the protest response was concluded?</p> <p>4 MR. JAFEK: Objection, goes beyond the 5 notice -- it goes beyond the scope of the notice. But 6 you can answer in your personal capacity.</p> <p>7 A. I -- I don't know, Paul.</p> <p>8 Q. (BY MR. KERLIN) Okay. I mean -- okay. 9 It just seems like you might want to wait until the 10 whole thing is done. I didn't know if perhaps it had 11 to do with the fact that Secretary Jewell would likely 12 be leaving the Department of the Interior with the 13 change of administrations. Any knowledge about that 14 one way or another?</p> <p>15 MR. JAFEK: The same objection. You can 16 answer in your personal capacity.</p> <p>17 A. Paul, I can only assume from the BIA 18 side that, you know, it's seldom that any of our folks 19 in the field would have an opportunity to meet with a 20 Secretary, and so that was likely what was driving our 21 trying to make it happen. But beyond that, I don't 22 know.</p> <p>23 Q. (BY MR. KERLIN) Okay. Could we pull up 24 DOI 19770. Okay. We'll mark this as Exhibit 846.</p> <p>25 (Deposition Exhibit 846 was remotely</p>	<p>1 email that I think you received, but it could have 2 been forwarded to you. It's from -- no, actually, I 3 think it went to Justin Wendland and then to you.</p> <p>4 If we go to the start of the email 5 that's on the screen right now, so if we go up maybe 6 one more page. Okay. Perfect.</p> <p>7 So this is an email from Justin 8 Wendland, March 14, 2017. "FYI... not sure how many 9 of you are on the green team listing but just in case, 10 please do your part in this survey if you have 11 anything to add. I too believe we," in parenthesis, 12 "(BIA) need to complete some type of debrief or an 13 after-action report," in parenthesis, "(probably not 14 as engaged or in-depth as the state's) in order to 15 better our next response by reviewing how this entire 16 operation from start to finish went including lessons 17 learned and how we can formulate a better more 18 efficient response in the next event.</p> <p>19 "Please forward to anyone I have missed 20 in BIA and those in DOI that may have ended up on the 21 ground here Thank you."</p> <p>22 Do you -- and it's a forward of Sean 23 Johnson. It's a -- the title of his email is "DAPL 24 Unlawful Protest Response After Action Review," and 25 "https://surveymonkey.com" for a survey that was set</p>

<p style="text-align: right;">Page 102</p> <p>1 up on SurveyMonkey, which is a website.</p> <p>2 And then this goes to you, if we go up a 3 page. "Thanks, Justin, do you know who is championing 4 this effort from the state? I would love to get a 5 copy of both their questions and responses."</p> <p>6 Do you recall if you completed the -- 7 the online after-action review SurveyMonkey that was 8 set up by Sean Johnson on behalf of the Department of 9 Emergency Services for North Dakota?</p> <p>10 A. No, sir, I -- I don't believe I would 11 have.</p> <p>12 Q. Did either the Department of the 13 Interior or BIA do any type of after-action review or 14 kind of after it's -- its resolved, any type of 15 look-back to see areas for improvement or things of 16 that nature with respect to the DAPL protest response?</p> <p>17 A. There was an after-action review of the 18 Operation Cannonball response.</p> <p>19 Q. Okay. And was that it?</p> <p>20 A. Yes, sir. I believe that's the only 21 after-action review that was conducted.</p> <p>22 Q. Do you happen to take place [sic] in the 23 after-action review or the -- I'm trying to think of 24 how to describe this. There was a meeting of 25 North Dakota law enforcement individuals that</p>	<p style="text-align: right;">Page 104</p> <p>1 withheld to State and local authorities by the 2 Department of the Interior or BIA during the DAPL 3 protests?</p> <p>4 A. All through all the research, we could 5 only identify one incident, and that had to do with 6 closure of the highway at the request of the State on 7 one particular date. And the information I reviewed 8 at the time, Darren Cruzan, on-site, declined to close 9 the highway. And that was the only withholding of 10 assistance that I could identify through my research.</p> <p>11 Q. Okay. Just to talk about that one a 12 little bit, what was the rationale for not closing the 13 highway at the request of State and local?</p> <p>14 A. In -- in the materials I reviewed, it 15 cited jurisdictional operational concerns. I am 16 unsure of the request itself, but at least from the 17 information I reviewed, it had the appearance that the 18 requested closure was off the reservation.</p> <p>19 Q. And is that the only request that you're 20 aware of that was made by local law enforcement, so 21 State and local authorities, to DOI or BIA?</p> <p>22 A. As I indicated earlier, I'm -- I know 23 that the State had asked for assistance, for instance, 24 in alerting them when we would see caravans. I think 25 there was some times where we had stopped traffic on</p>
<p style="text-align: right;">Page 103</p> <p>1 responded to discuss it. Did you attend anything like 2 that with respect to North Dakota law enforcement?</p> <p>3 A. No, sir, I did not.</p> <p>4 Q. Okay. Okay. I want to talk about a 5 couple other topics. I think we left off -- if we go 6 back to 80- -- 803. I want to pick up at topic 16. 7 "Enforcement actions or investigations taken by the 8 U.S.A. . . . at any time with respect to any of the 9 persons on Corps-managed land who were associated with 10 the DAPL protests."</p> <p>11 Any enforcement actions or 12 investigations taken by DOI or BIA with respect to any 13 of the persons on Corps-managed lands who were 14 associated with the DAPL protests?</p> <p>15 A. No, sir, outside of the two responses 16 that I had indicated where we had law enforcement 17 officers respond. I don't consider either of those 18 to -- to fit the definition of an enforcement action 19 or an investigation by the department regarding the 20 persons on Corps-managed lands.</p> <p>21 Q. Okay. I want to talk to you about 22 topic 20. "Decisions by U.S.A. to provide or withhold 23 law enforcement assistance to State and local 24 authorities during the DAPL protests."</p> <p>25 Any law enforcement assistance that was</p>	<p style="text-align: right;">Page 105</p> <p>1 the reservation side of the highway.</p> <p>2 So there -- there was some of those 3 instances that I was able to identify in the executive 4 briefings, but those seemed to be just sprinkled 5 throughout and likely were the result of, you know, 6 the -- the sheriff's office calling down, saying, 7 "Hey, can -- can you send an officer out and see if 8 anybody is moving?" or "Can you slow traffic down? 9 We've got an incident happening," something of that 10 nature.</p> <p>11 Not -- it wouldn't have been, you know, 12 some -- some request that came all the way up, for 13 instance, to the Bureau or Department level.</p> <p>14 Q. Okay. I want to change -- I'm not on 15 topic 20, but I do want to ask you about, you know, 16 this issue of just, you know, limiting -- well, let me 17 start over.</p> <p>18 My understanding is on the south side of 19 the Cannonball River there's an overlap of Corps land 20 and Standing Rock Sioux Reservation land. Are you of 21 a -- of a similar understanding?</p> <p>22 A. I tried to make heads or tails of that 23 in all the documentation and research and testimony, 24 but I -- I presume that's correct, yes.</p> <p>25 Q. Okay. And so there was -- I believe the</p>

ND OBJ:
Introduces
new material

<p style="text-align: right;">Page 106</p> <p>1 camps are called -- and they're sometimes referred 2 differently by different individuals, but there's the 3 Sacred Stone Camp. And if that's on reservation land 4 as well as Corps-managed land, so there's overlap 5 there, did the Corps coordinate with BIA or the 6 Department of the Interior about that reservation land 7 and the camps that were on reservation land?</p> <p>8 A. I don't believe so.</p> <p>9 MR. JAFEK: I'm going to object. I 10 think the question is non- -- vague and ambiguous. 11 But you can answer.</p> <p>12 A. I don't believe so. I know throughout 13 the duration of the event, determining land statuses 14 was something ongoing from the beginning to the end. 15 And so it may very likely have been at the conclusion, 16 or even after, that it was realized that that may have 17 been both reservation and Corps property.</p> <p>18 Q. (BY MR. KERLIN) Okay. And then at one 19 point there was -- were you aware that the Corps had 20 an -- you know, they indicated that they wanted to 21 establish a free-speech zone?</p> <p>22 A. I did see that in the briefing 23 materials, yes.</p> <p>24 Q. And so if that free-speech zone was on 25 the south side of the Cannonball River, which would be</p>	<p style="text-align: right;">Page 108</p> <p>1 Our -- our focus was providing adequate 2 resources, and our primary objection would be that we 3 lacked the appropriate resources should a location on 4 the reservation be established for a significant 5 higher number of people.</p> <p>6 Q. I -- I don't think I have -- well, I 7 have one more question.</p> <p>8 Mr. O'Neal, have I been respectful and 9 courteous to you throughout the course of this 10 deposition today?</p> <p>11 A. Yes, sir.</p> <p>12 MR. KERLIN: With that, the Plaintiff 13 State of North Dakota would pass the witness to 14 counsel for the United States if they have any 15 questions at this time.</p> <p>16 MR. JAFEK: Thank you. If we could just 17 take five, maybe ten minutes, I'll confer with 18 Mr. O'Neal, and then we'll be -- we'll be back with 19 any follow-up questions, if necessary.</p> <p>20 THE VIDEOGRAPHER: Going off the record. 21 The time is 6:53 p.m. UTC, 11:53 a.m. Mountain. 22 (Recess taken 11:53 a.m. to 12:00 noon 23 Mountain Standard Time.)</p> <p>24 THE VIDEOGRAPHER: We are back on the 25 record. The time is 7:00 p.m. UTC, 12:00 p.m.</p>
<p style="text-align: right;">Page 107</p> <p>1 an overlap of Corps-managed land and Standing Rock 2 Reservation land, any coordination with respect -- you 3 know, was the Corps saying, "Hey, BIA, this is what 4 we're going to do, and is this going to create any 5 issues for you?" Or these are -- "We want to make you 6 aware of it," that sort of thing?</p> <p>7 A. No. There -- and more than likely, that 8 would not have been something BIA would have been in 9 support if -- if it would have been known at that time 10 that that was joint property, or if it was -- if it was 11 is, in fact, joint property.</p> <p>12 Q. And why is that? Why wouldn't BIA be in 13 support of that?</p> <p>14 A. From a resource allocation, as I 15 indicated earlier, and, you know, our ability to 16 respond and provide services, I mean, is extremely 17 limited.</p> <p>18 And any -- any time -- you know, even 19 in -- as I indicated earlier, when the -- when the 20 State was looking to remove people from the Corps of 21 Engineers properties, our concern was those people 22 being moved onto the reservation where then they would 23 become the responsibility of the Bureau of Indian 24 Affairs and then any impact to the tribal reservation 25 lands.</p>	<p style="text-align: right;">Page 109</p> <p>1 Mountain.</p> <p>2 EXAMINATION</p> <p>3 BY MR. JAFEK:</p> <p>4 Q. Thank you. So I just have a couple 5 areas of questions.</p> <p>6 Mr. O'Neal, if you recall earlier, you 7 were being asked questions by Mr. Kerlin regarding the 8 September 9, 2016, joint statement. And that's 9 Exhibit 494, and that's being shown to you now on the 10 screen.</p> <p>11 My first area of questions, you were 12 asked some questions by Mr. Kerlin asking whether the 13 Department of the Interior was bound by this exhibit, 14 and he used that term "bound" in a couple of different 15 questions.</p> <p>16 In answering those questions, you 17 weren't commenting on any legal impact on the 18 Department of Interior by joining this statement, 19 correct?</p> <p>20 MR. KERLIN: Objection, form.</p> <p>21 A. That's correct.</p> <p>22 Q. (BY MR. JAFEK) Okay. And then also, 23 with respect to the statement, you're not fam- -- 24 well, are you -- are you familiar with whether the 25 Department of the Army or the Department of Engineers</p>

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110 to 113

<p style="text-align: right;">Page 110</p> <p>1 had any input or what that input was into this 2 statement?</p> <p>3 A. I am not aware of any input they may 4 have had.</p> <p>5 MR. JAFEK: I don't have any further 6 questions.</p> <p>7 MR. KERLIN: Okay. Nothing further on 8 behalf of the State.</p> <p>9 MR. JAFEK: Okay. And I would just like 10 to briefly thank you, Paul, for getting this done in 11 time for Mr. -- for Jason to get on to his -- his 12 meeting.</p> <p>13 THE VIDEOGRAPHER: Okay. This concludes 14 today's deposition of Jason O'Neal. The time is 15 7:01 p.m. UTC, 12:01 p.m. Mountain. We are off the 16 record.</p> <p>17 (At 12:01 p.m. Mountain Standard Time 18 the proceedings were not being videotaped.)</p> <p>19 MR. KERLIN: Perfect. And for the court 20 reporter, read and sign -- I'm sure that's what you 21 want -- Mr. Jafek?</p> <p>22 MR. JAFEK: Correct.</p> <p>23 MR. KERLIN: Perfect. Okay. Thanks 24 again, Mr. O'Neal. Thanks for your time.</p> <p>25 MR. JAFEK: Yes, thank you.</p>	<p style="text-align: right;">Page 112</p> <p>1 I, JASON N. O'NEAL, do hereby certify 2 that I have read the above and foregoing deposition 3 and that the same is a true and accurate transcription 4 of my testimony, except for attached amendments, if 5 any.</p> <p>6 Amendments attached <input type="checkbox"/> Yes <input checked="" type="checkbox"/> No</p> <p>7</p> <p>8</p> <p>9</p> <hr/> <p style="text-align: right;">JASON N. O'NEAL</p> <p>10</p> <p>11</p> <p>12 The signature above of JASON N. O'NEAL 13 was subscribed and sworn or affirmed to before me in 14 the county of _____, state of 15 _____, this _____ day of 16 _____, 2022.</p> <p>17</p> <p>18</p> <p>19</p> <hr/> <p style="text-align: right;">Notary Public</p> <p>20 My Commission expires: _____</p> <p>21</p> <p>22</p> <p>23</p> <p>24</p> <p>25 State of North Dakota 12/6/22 (tcm)</p>
<p style="text-align: right;">Page 111</p> <p>1 (Discussion off the record.)</p> <p>2 THE REPORTER: Is there any hurry on the 3 turnaround of the final?</p> <p>4 MR. JAFEK: Not from our side.</p> <p>5 MR. KERLIN: Yeah, not from plaintiff.</p> <p>6 WHEREUPON, the within proceedings were 7 concluded at the approximate hour of 12:02 p.m. 8 Mountain Standard Time on the 6th day of December, 9 2022.</p> <p>10 * * * * *</p> <p>11</p> <p>12</p> <p>13</p> <p>14</p> <p>15</p> <p>16</p> <p>17</p> <p>18</p> <p>19</p> <p>20</p> <p>21</p> <p>22</p> <p>23</p> <p>24</p> <p>25</p>	<p style="text-align: right;">Page 113</p> <p>1 REPORTER'S CERTIFICATE</p> <p>2 STATE OF COLORADO) 3 CITY AND COUNTY OF DENVER) 4</p> <p>I, TRACY C. MASUGA, Registered 5 Professional Reporter and Certified Realtime Reporter, do hereby certify that previous to the commencement of 6 the examination, the said JASON N. O'NEAL was duly sworn or affirmed by me to testify to the truth in 7 relation to the matters in controversy between the parties hereto; that the said deposition was taken in 8 machine shorthand by me at the time and place aforesaid and was thereafter reduced to typewritten 9 form; that the foregoing is a true transcript of the questions asked, testimony given, and proceedings had.</p> <p>10</p> <p>I further certify that I am not employed 11 by, related to, nor of counsel for any of the parties herein, nor otherwise interested in the outcome of 12 this litigation.</p> <p>13 IN WITNESS WHEREOF, I have affixed my signature this 12th day of December, 2022.</p> <p>14</p> <p>15</p> <p>16 <input checked="" type="checkbox"/> Reading and Signing was requested. 17 <input type="checkbox"/> Reading and Signing was waived. 18 <input type="checkbox"/> Reading and Signing is not required.</p> <p>19</p> <p>20</p> <p>21</p> <p>22</p> <p>23</p> <p>24</p> <p>25</p> <p style="text-align: right;"> Tracy C. Masuga Registered Professional Reporter Certified Realtime Reporter</p>

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1	Errata Sheet
2	
3	NAME OF CASE: Plaintiff vs UNITED STATES
4	DATE OF DEPOSITION: 12/06/2022
5	NAME OF WITNESS: Jason O'Neal
6	Reason Codes:
7	1. To clarify the record.
8	2. To conform to the facts.
9	3. To correct transcription errors.
10	Page ____ Line ____ Reason ____
11	From _____ to _____
12	Page ____ Line ____ Reason ____
13	From _____ to _____
14	Page ____ Line ____ Reason ____
15	From _____ to _____
16	Page ____ Line ____ Reason ____
17	From _____ to _____
18	Page ____ Line ____ Reason ____
19	From _____ to _____
20	Page ____ Line ____ Reason ____
21	From _____ to _____
22	Page ____ Line ____ Reason ____
23	From _____ to _____
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25	_____